

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF NEW YORK

3 -----  
4 UNITED STATES OF AMERICA,

5 -versus-

08-CR-77

6 LINDA O'CONNOR and DEAN SACCO.  
7 -----

8 TRANSCRIPT OF JURY TRIAL

9 held in and for the United States District Court,  
10 Northern District of New York, at the Federal Building and  
11 Courthouse, 15 Henry Street, Binghamton, New York, on  
12 MONDAY, May 12, 2008, before the HON. THOMAS J. McAVOY,  
13 Senior United States District Court Judge, PRESIDING.

14 APPEARANCES:

15 FOR THE GOVERNMENT:

16 UNITED STATES ATTORNEY'S OFFICE

17 BY: MIROSLAV LOVRIC, AUSA

18 Binghamton, New York

19 FOR THE DEFENDANT O'CONNOR:

20 FEDERAL PUBLIC DEFENDER'S OFFICE

21 BY: LISA PEEBLES, AFPD

22 Syracuse, New York

23 FOR THE DEFENDANT SACCO:

24 KELLY FISCHER, ESQ.

25 Binghamton, New York

1 MR. FISCHER: Judge, there have been a couple  
2 of surprise disclosures during the course of this trial.  
3 First is the AUSA from New Jersey. Now we have a witness  
4 who, at the eleventh hour, 4:00, 3:00 on a Friday afternoon,  
5 after having met with the AUSA and the lead FBI agent,  
6 discloses a fact that goes directly to the heart of the case  
7 that could not be any stronger, more direct or more important  
8 really. It appears to me that the only reason I found out  
9 about it before I crossed him is because I made an objection  
10 to something leading up to it. There was no disclosure made  
11 prior to, apparently there was no attempt to disclose that  
12 information before I cross-examined the witness.

13 In this case, Mr. Sacco faces potentially a  
14 life sentence. This is as important as it gets, this  
15 evidence, and your Honor, the consequences of this surprise  
16 couldn't be more devastating, so I want to point out, Judge,  
17 that even if there's no discovery violation, that it is in  
18 the sound discretion of the trial court to refuse to admit  
19 evidence of a witness, to exclude or include a witness, and I  
20 cite US v. Combs, Tenth Circuit case from 2001, 267 F 3d  
21 1167.

22 THE COURT: 267 F 3d 1167.

23 MISS PEEBLES: Yes.

24 MR. FISCHER: I also note the general tenor of  
25 the disclosure rules basically giving notice to the defense

1 so that they can confront the evidence against them. There  
2 was no notice, absolutely zero in this regard. And, you  
3 know, I point out some older decisions of the Supreme Court:  
4 US v. Gault from 1967, 387 US 1, that notice to the parents  
5 the night before a juvenile delinquency hearing is  
6 constitutionally inadequate.

7 THE COURT: In either one of the cases you  
8 cited, did the court give a reason for what it did? I mean,  
9 like from what I understand, the AUSA -- I don't want -- Mr.  
10 Lovric has made it abundantly clear what his position is.  
11 The AUSA read a newspaper, came up here and testified, and  
12 the government didn't know about him until he called. And  
13 the same thing with this witness. As I understand it, there  
14 was never a disclosure. Even though this witness had been  
15 questioned in the past by FBI agents, he never disclosed to  
16 anybody the testimony he gave Friday until he talked with a  
17 representative of the US Attorney's Office upstairs, who  
18 asked Mr. Lyons to speak with him and Mr. Lyons did, and that  
19 revelation was then made to Mr. Lyons, who passed it on to  
20 Mr. Lovric. Is there something that the government did or  
21 didn't do that you could point to that would be a basis for  
22 the Court saying, I'm going to exercise my discretion in not  
23 letting this evidence before the jury or striking whatever  
24 has been presented to the jury thus far?

25 MR. FISCHER: No, your Honor. I accept prima

1 facie what Mr. Lovric said about AUSA Lurie and that the  
2 disclosure concerning Mr. DiFiori was made to him the day of  
3 Mr. DiFiori's testimony. I understand that that is his  
4 position. I have no reason to refute that. But I do point  
5 out, in a case like Powell v. Alabama, the Supreme Court  
6 decision where a trial attorney was appointed the morning of  
7 the trial, that wasn't due to the fault of the prosecution in  
8 that case but that was a constitutionally informal proceeding  
9 because -- for a number of primarily Sixth Amendment reasons.  
10 But basically the same thing applies in this situation, that  
11 time to investigate, yes, there was an opportunity to discuss  
12 this with -- to interview Mr. DiFiori, but the allegation  
13 that Mr. DiFiori made was very different than what he has now  
14 testified to. So it is a surprise. If it was a surprise to  
15 the FBI who interviewed the witness three, potentially four  
16 times, it certainly is a surprise to the defense, and I think  
17 this -- the nature of it coming after we've picked a jury and  
18 after we've done our opening statements deprives Mr. Sacco of  
19 the opportunity to truly address and confront all of these  
20 issues with a jury that's going to decide his fate in this  
21 case. That's very troubling. That goes to the heart of  
22 justice in this case, Judge.

23 And I go to state court and try civil cases,  
24 and nondisclosure of witnesses a month in advance of trial is  
25 going to mandate a dismissal of a case. 438 disclosure on

1 Friday afternoon is far more powerful than that.

2           So, what I ask, Judge, on the basis of the  
3 law, little bit of law that I've cited, which I'm aware  
4 addresses the due process aspects of these late disclosures,  
5 is, first, I ask for a mistrial. Second, I ask, if there is  
6 no mistrial, that at least the testimony of Mr. DiFiori  
7 concerning the alleged confession be stricken, with an  
8 appropriate instruction to the jury, or -- and thirdly, in  
9 the alternative, at least that there be an adjournment of  
10 this matter so we may undertake further investigation of  
11 Mr. DiFiori's background, experience, because the relative  
12 importance of Mr. DiFiori's testimony has come from way back  
13 in the line to the head of the line and is -- the priority of  
14 addressing has changed dramatically.

15           THE COURT: Thank you, Mr. Fischer.

16           Miss Peebles.

17           MISS PEEBLES: Your Honor, I concur with what  
18 Mr. Fischer states in terms of the significance of his  
19 testimony and the fact that we have been investigating this  
20 case for several months and we've talked to just about  
21 everybody, including Mr. DiFiori, your Honor. So I mean, I  
22 guess I would just concur with what Mr. Fischer is stating,  
23 the nature of it, the gravity of what he's now suggesting in  
24 light of what he stated in the past and the fact that, you  
25 know, we weren't able to fully and properly investigate his

1 background, because what he stated in the past was relatively  
2 insignificant and what he's saying now is obviously very  
3 significant. We don't know much about him. It wasn't an  
4 avenue we explored fully because it wasn't something, when we  
5 spoke to him, my investigator spoke to him, nothing remotely  
6 even close to what he stated on the stand on Friday. So, you  
7 know, perhaps striking his testimony with a curative  
8 instruction would be an appropriate course of action that --  
9 I guess that would be our position at this point, your Honor.

10 THE COURT: Let me ask you this: What's your  
11 position on a mistrial and a continuance? Same as Mr.  
12 Fischer?

13 MISS PEEBLES: Yes.

14 THE COURT: You want a mistrial?

15 MISS PEEBLES: Well, I would rather a  
16 continuance as opposed to mistrial at this point.

17 THE COURT: How long of a continuance do both  
18 of you seek?

19 MISS PEEBLES: I would say at least two weeks,  
20 Judge.

21 THE COURT: I'm sorry?

22 MISS PEEBLES: I would say at least two weeks.

23 MR. FISCHER: I would ask for at least a week,  
24 your Honor, to get that done.

25 THE COURT: All right. Mr. Lovric?

1 MR. LOVRIC: All done?

2 THE COURT: He said done.

3 MR. FISCHER: For now.

4 MR. LOVRIC: Judge, first of all, this is  
5 posturing, in my view. This is posturing by both defendants.  
6 These buzz words being thrown around, notice by defense  
7 counsel. There is no notice required. They keep referring  
8 to late notice, no notice, whatever notice they keep  
9 referring to. First of all, there is no notice requirement  
10 under the law, case law, under any Rule 16, under any Federal  
11 Rules of Evidence. They received all the discovery and all  
12 the notice that the law requires and plus some. The fact of  
13 the matter is, they keep referring to this as late notice.  
14 There is no late notice. There is no late anything in this  
15 case. The fact of the matter is, the defendants are  
16 complaining that they learned things during trial that they  
17 did not know from all of the volumes of discovery and  
18 materials given to them, and that is true. Just like I  
19 learned things that I didn't know and could not prepare for  
20 from all the volumes of materials that I reviewed to those  
21 things that are at heart here.

22 Adam Lurie's testimony, I had no idea Adam  
23 Lurie existed on this planet. I went through and explained  
24 how I learned of his existence and how that came about. Adam  
25 Lurie. The defendant or defendants are claiming that they

1 are somehow surprised by that. My response to that is, so  
2 what. We're all surprised at trial by a lot of things that  
3 we can't prepare for or envision. They can't point to any  
4 case law or statute or Rules of Evidence to show that it was  
5 some type of unfair surprise or some type of surprise, where  
6 it was someone's fault that they were surprised, and that's  
7 what -- that's what it's all about in the courtroom. You  
8 have to be able to point to something to say, this is why I'm  
9 entitled to remedy. It's not enough for a defendant simply  
10 to say, I'm surprised. To be quite honest, Judge, that's  
11 irrelevant. It's irrelevant as to any motion, it's  
12 irrelevant as to any curative instruction, it's irrelevant,  
13 period. And for the defendants to want a mistrial or a  
14 continuance is absolutely irrelevant simply because they're  
15 surprised. I'm sure they'd be surprised by other things  
16 which they're not discussing with us, but it's irrelevant.

17 Mr. DiFiori's testimony, no different than  
18 Mr. Adam Lori's, no different. They keep saying notice.  
19 There's no notice requirement if I learn of it as his wife is  
20 testifying. Ten minutes before he comes into the courtroom,  
21 I learn of this information. Frankly, even if I had learned  
22 of it nine weeks ago, there's no notice requirement other  
23 than I would turn over to them any additional reports filled  
24 out by any investigator or agent in connection with that new  
25 information. But if there was no such reports filled out or

1 no such summaries prepared, there is no notice violation.  
2 There is no law violation. There is no case law violation.  
3 The defendants say they're surprised by it. I was surprised  
4 too, and again, my response to that, it's simply irrelevant  
5 as to what they're seeking in terms of remedy.

6 Continuation -- Well, first let me address the  
7 motion for a mistrial. I don't see any basis in law, none,  
8 none. If a witness were to walk in and say, I hold in my  
9 hands five videotapes of Mr. Sacco raping the victim, he  
10 would get a copy, as I would, and those would go into  
11 evidence as long as I can establish those are the tapes. The  
12 fact that they walked in two minutes before May 12 testimony  
13 starts, it's irrelevant. It simply has no basis in law for  
14 what the remedy is they're seeking at this point.

15 Continuation to do what? Continuation to look into  
16 Mr. DiFiori's background? Well, they had the whole weekend  
17 to do that.

18 I might point out, DiFiori is a witness that  
19 was on the government's list. And I know the defense has  
20 talked to almost every witness they could find and looked  
21 into every witness' background, so they've done a lot of  
22 things that they normally would do and should do, and if the  
23 defendants want to continue looking through Mr. DiFiori's  
24 background, this trial is going to go on at least another  
25 week, as I foresee it, they can continue it. And they have

1 their investigator here. They can go out and interview  
2 Mr. DiFiori's neighbors if they want to and so on. They can  
3 recall him if they choose to. There's no basis for a  
4 continuance, Judge, any more than there is for a mistrial.

5 I simply wanted the record to be clear that  
6 there are no notice violations, nor was there any notice  
7 required, and that whatever surprises, if you want to call it  
8 surprises, the defense encountered, I likewise encountered  
9 the same as they occurred.

10 And that being said, Judge, we're ready to  
11 proceed forward.

12 THE COURT: All right. Well, of course this  
13 situation, at least with respect to Mr. DiFiori, developed  
14 late Friday afternoon, and instead of following my usual  
15 practice, which would have been to complete his  
16 cross-examination and redirect, even though it was late in  
17 the day because he was from out of state so not to have to  
18 drag him back here on Monday, the Court adjourned and there  
19 was time that elapsed, the weekend, to do whatever  
20 investigation the defense felt should be done.

21 Secondly, I agree with the government that  
22 there was no notice in this particular instance. You can't  
23 give notice to something you don't know, number one. Number  
24 two, if they did know it, I don't think there was any  
25 requirement because there was no writings to turn over.

1 Certainly isn't Brady material.

2 So the Court's going to deny the motions of  
3 both counsel for a mistrial and continuance and give you both  
4 an exception on the record.

5 I'll ask the clerk to bring the jury in and  
6 have the witness.

7 (Jury present)

8 THE COURT: Morning, ladies and gentlemen.  
9 Morning. I know that you're glad to be here this morning  
10 because its snowing in Altoona and Johnstown. It's not  
11 snowing here so it's much better to be here.

12 Are we ready to proceed with the witness, Mr.  
13 Fischer?

14 MR. FISCHER: Yes, your Honor. Thank you.  
15 May it please the Court, counsel:

16 CROSS-EXAMINATION CONTINUED

17 BY MR. FISCHER:

18 Q Good morning.

19 A Good morning.

20 Q I'd like to take you back to the Christmas party.  
21 Did you speak with Mr. Sacco at the Christmas party?

22 A Yeah, probably did. Absolutely.

23 Q I'm sorry. I couldn't understand.

24 A I did. I'm sure. I spoke with most people there.

25 Q Do you remember what you spoke with Mr. Sacco

1 about?

2 A Not in particular.

3 Q Did Mr. Sacco show you pictures at that Christmas  
4 party?

5 A He was taking pictures.

6 Q Did he show you pictures from a trip that he took?

7 A Not at the Christmas party, but he showed me  
8 pictures of the trip he took.

9 Q When did he show you pictures of the trip he took?

10 A When he came back from the trip.

11 Q When was that?

12 A I don't know the dates. I saw pictures of a girl  
13 with the family and two kids. He said she was 19 years old.  
14 He said prior to going on the trip it was a girl he was going  
15 to go visit.

16 Q My question was this: When did -- when did this  
17 happen that he showed you these pictures?

18 A When he came back from his trip.

19 Q I understand that. Can you give me an approximate  
20 date of when that occurred.

21 A I don't know.

22 Q Was it before the Christmas party or after the  
23 Christmas party?

24 A I don't know the dates. I'm sure this information  
25 of his trip, it would be after that.

1           Q     Where was Mr. Sacco living at the time he showed  
2 you those pictures?

3           A     On 46 Monitor Street.

4           Q     Do you remember where you were when he showed you  
5 those pictures?

6           A     I was in his apartment.

7           Q     How often did you go to his apartment?

8           A     Would be couple times a week. He's in the same  
9 building up and down.

10          Q     So you would actually enter his apartment several  
11 times a week?

12          A     No. He would invite me over. I wouldn't have a  
13 key to any of my tenants. Walking to a nearby tenant's  
14 apartment.

15          Q     Whether Mr. Sacco invited you or whether you  
16 entered in some other way, you in fact were --

17          A     There is no other way for me to enter or reason to  
18 enter into a tenant's apartment.

19          Q     Okay. But you were in Mr. Sacco's apartment a  
20 couple of times a week?

21          A     Well, he was there, he would invite me over. He  
22 would call me down. As a matter of fact, I remember now  
23 before his trip he have this -- before going to his trip,  
24 because apparently he got in touch with his lady through the  
25 internet, he would have a copy of pictures.

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1 MR. FISCHER: Your Honor, may I interrupt.  
2 I'm going to move to strike the response as nonresponsive and  
3 ask you direct that the witness respond to the question that  
4 I'm asking.

5 THE COURT: The last part of the answer  
6 regarding what he did with respect to the internet and before  
7 he went on his trip is nonresponsive and will be stricken.  
8 And just kind of listen to what he's asking. Think about it  
9 before you start to answer.

10 THE WITNESS: Okay.

11 BY MR. FISCHER:

12 Q Were you or were you not in Mr. Sacco's apartment a  
13 couple of times a week on average?

14 A Once in a while. I don't know if it's couple times  
15 a week, one time a week, two times a week. I don't  
16 understand the -- I was very friendly with him. I never  
17 considered -- considered him a friend. He was a  
18 tenant/colleague/coworker. I have some deal of trust with  
19 him. I never have any reason for anything. And if he  
20 invites me down to his apartment and he then mentioned he  
21 wanted to go visit his girl, he would show me pictures of  
22 her. He says, maybe one day you will help me with Spanish in  
23 going to visit this girl down here. He showed me pictures  
24 before, pictures he printed from the internet, and when he  
25 came back he showed me pictures of that as well. He showed

1 me other pictures with other girls that seem to be much  
2 minor.

3 Q May I interrupt you, please?

4 A Yes.

5 MR. FISCHER: Your Honor, I'm going to ask  
6 that the witness' answer be struck as nonresponsive and ask  
7 for instruction that he respond to the question that I asked.

8 THE COURT: Well, the part of when he was  
9 discussing when he was there a couple times a week or once a  
10 week, that part can stand. The remainder of the answer will  
11 be stricken.

12 Q It's fair to say that you were in Mr. Sacco's  
13 apartment at least once a week on average?

14 A Possibly.

15 Q And how long did Mr. Sacco rent from you?

16 A He -- I don't recall the dates, but I can tell you  
17 because he start working in the Manhattan Club. Whenever he  
18 start working in the Manhattan Club, which is information you  
19 can, I guess, ask the Manhattan Club. Was about two weeks  
20 after he started working at that company, and he was employed  
21 at the company as an independent contractor with a real  
22 estate license he had, like everybody who have to work at the  
23 place. Would be about two to three weeks, estimating, that I  
24 met him at the office. Two to three weeks is when I start  
25 renting to him, whatever that time was. What is the exact

1 date, I don't recall now. But there should be information  
2 that you can receive free and know the exact date, if that's  
3 what you want to know.

4 Q Did Mr. Sacco rent from you for more than a year?

5 A I believe so.

6 Q Did Mr. Sacco rent from you for more than two  
7 years?

8 A I guess might be somewhere around that time.

9 Q So is it fair to say that you were in Mr. Sacco's  
10 apartment at least 50 or 60 times?

11 A No. He didn't live in that apartment all the time,  
12 once I move into that house.

13 Q I understand. Let me ask you this: When Mr. Sacco  
14 lived in a different apartment that you owned, did you also  
15 visit him weekly?

16 A Not particularly. I visit him -- that apartment  
17 was two roommates, two brothers, Luis and Andre Medina that  
18 were sharing that apartment.

19 Q How often did you visit Mr. Sacco in that  
20 apartment?

21 A Maybe -- It's not like I visit him, it's like I'm  
22 visiting a friend.

23 Q How often did you visit that apartment when  
24 Mr. Sacco --

25 A About once a week.

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1 Q About once a week?

2 A Yes.

3 Q So is it fair to say you visited 579 in which Mr.  
4 Sacco lived that you owned at least 50 or 60 times?

5 A The second apartment?

6 Q Combined.

7 A Could be. Could be 20, could be 50, could be 30.

8 Q On the occasions when you visited Mr. Sacco's  
9 apartments did you ever see any pictures there other than the  
10 pictures from his vacation?

11 A Some pictures from two of his vacations. He went  
12 twice to the Dominican Republic that I know.

13 Q Other than those pictures from the Dominican  
14 Republic, you didn't see any other pictures during these  
15 visits?

16 A That's all the pictures I've seen.

17 MR. FISCHER: Excuse me.

18 Q Before last week, have you discussed this matter  
19 with your wife?

20 A No.

21 Q Have you discussed even the topic of when you were  
22 supposed to be here?

23 A Well, they send us -- the officers came to talk  
24 twice to the house, and then the second time they wrote a  
25 letter about the time we supposed to be here and we're

1 supposed to call Kathleen -- I don't remember her last name,  
2 which is, again, from this office. I call her, she said she  
3 would be notifying me. I explained to her I had a business  
4 trip and I explained the dates of the trip. That should be  
5 fine. And then she call us, and I was actually on the  
6 business trip when she call, and I came right on time for  
7 this.

8 Q I'll rephrase my question.

9 A Okay.

10 Q Did you discuss with your wife coming up here?

11 A Discuss what?

12 Q Coming up here to testify in this case, did you  
13 discuss that at all with your wife?

14 A This, discuss what the case -- what you -- I don't  
15 know what you're trying to ask me. Discuss what  
16 specifically?

17 Q I'm sorry. I'll try to make my question  
18 understandable.

19 A Okay.

20 Q Did you ever speak with your wife about making  
21 arrangements to physically come from New Jersey --

22 A Of course.

23 Q -- to Binghamton --

24 A Of course.

25 Q -- for your testimony?

1           A     Yes, we need to coordinate. I was in Vegas and  
2 California and I flew in, and the day I flew in, I left  
3 her -- we drove up here, stayed at the hotel and testified  
4 the next day, which was Friday.

5           Q     So the answer to my question is, yes, you did?

6           A     Of course.

7           Q     Did you ever discuss with your wife any of the  
8 testimony that either of you were going to give here?

9           A     Any of the testimony? I'm sorry.

10          Q     That you were going to give in this court?

11          A     No.

12          Q     Was your wife present the first time the FBI agent  
13 and State Police investigator came to your home?

14          A     She was present both times.

15          Q     And after the State Police investigator and FBI  
16 agent left your home, did you have any discussion at all with  
17 your wife about the subjects discussed in that interview?

18          A     Not in particular. Everything we wanted to show  
19 them, like all the information I had, the letter he sent me,  
20 for example, the letter he sent me when he was in jail, I  
21 turn them in to the prosecutor. That's pretty much about it.

22          Q     Let me see if I can rephrase my question.

23          A     Okay.

24          Q     After the investigator and the FBI agent left your  
25 home the first time --

1           A     Okay.

2           Q     -- did you have any discussions with your wife  
3 about this matter?

4           A     I don't think I went through any details. The same  
5 things I spoke, she spoke. The same things I spoke here and  
6 she spoke there. The only thing I have not mentioned at that  
7 point to the officer was the fact of what he had told me that  
8 they found in the apartment prior to bringing him to the  
9 hospital the following morning.

10          Q     I cannot tell from your answer --

11          A     Okay.

12          Q     -- whether after the police left your house the  
13 first time you did or did not have conversations with your  
14 wife about this matter.

15          A     I'm sure we did. You know, we -- other than --  
16 what kind of conversations that you ask me I had? I don't  
17 understand. What is it exactly you're asking me that I have  
18 conversations? They left the apartment and talk about what?  
19 About what we have talked to them? We talk in front of them.

20          Q     Let me see if I can make my question more direct.  
21 Did you at any time, after the FBI agent and the state  
22 trooper Santiago left your house after the first interview,  
23 after that time or after they left did you ever have any  
24 conversations, any conversations with your wife about this  
25 matter?

1           A     Probably did. I probably have a conversation. I  
2 don't think we sit down for an hour to talk about this, but I  
3 probably have some comments and she has her comments. I  
4 guess -- I guess normal conversation after a police officer  
5 comes to your house, question, and they leave, I guess we  
6 have a conversation. We talked to each other. I'm sure we  
7 did.

8           Q     Before the FBI agent and state trooper came to your  
9 house the first time, did you and your wife ever discuss the  
10 pictures that Mr. Sacco showed you from the Dominican  
11 Republic?

12          A     The -- the first trip with the girl, that was 19 --

13          Q     I want to make it clear, I'm asking whether you had  
14 the conversations or not, not for the substance.

15          A     There is two difference pictures of this situation.  
16 One is with her family, the girl was with her family, family  
17 and her children, and he's saying she was 19; very small  
18 girl. The other pictures, they were -- you look at these --  
19 when I look at these pictures, I see my niece. They were not  
20 pictures in which you will see an adult person in there.  
21 They seem teens. They seem little teenagers, if you will.  
22 And she didn't have a good feeling of all that, of all that.

23          Q     Mr. DiFiori, let me interrupt you, please.

24          A     Yes.

25          Q     Let me ask you a little bit about your background,

1 please.

2 A Yes.

3 Q You are a businessman?

4 A Yes, I am.

5 Q You transact business with very bright, sharp  
6 people every day, don't you?

7 A Yes, I do.

8 Q In New York City?

9 A In different places.

10 Q Around New York City?

11 A Yeah. Around New York, California, and here and  
12 other countries as well.

13 Q I didn't hear.

14 A In other countries as well, New Mexico, in business  
15 as well. Also Argentina where I am from originally.

16 Q You're from Argentina?

17 A Originally.

18 Q How long have you lived here in the US?

19 A First time I came was in Miami, 1990.

20 Q And how old are you now?

21 A I'm going to be 38. Thirty-seven.

22 Q So you were 19, 20 years old when you came to the  
23 US?

24 A Yeah. Twenty, I believe.

25 Q What did you do in Argentina before you came to the

1 US?

2 A I studied. I had businesses. I came to -- When I  
3 came to the United States, I brought money, invest in a  
4 restaurant in Florida. I have different businesses in  
5 Argentina from import/export, retail stores, like clothing  
6 stores, ice cream shops, shop one. When I was actually 19, I  
7 was creator of sales for organization with hundred people  
8 under me.

9 Q Do you have a good relationship with your wife?

10 A Excellent.

11 Q You're able to speak about many subjects?

12 A Pretty much everything. The only thing my entire  
13 life I never told my wife about, about the other day, last  
14 Friday that I was here, was that Sacco has confessed to me  
15 the night before I took him to the hospital.

16 Q Now the night before you took him to the hospital,  
17 as I understand your testimony, you said that Mr. Sacco  
18 appeared, for lack of a better word, rough?

19 A Yeah. And as this weekend went through, I remember  
20 also as I walk in and I see him there like within a picture  
21 what he was doing with those pills. He was actually opening  
22 the sole of his shoe to try to feed them in there.

23 Q This is the night before?

24 A That is the day I find him. I forgot to mention  
25 him -- I find him with the pills. He was trying to fit in

1 the pills in the sole of the shoe. Then I ask him what he's  
2 doing, and he told me that he -- they were going to come and  
3 get him; if they did, he was going to swallow the pills, that  
4 he will have time, he says, to do that.

5 Q So this is the night before?

6 A This is the afternoon -- that is the day I found  
7 him with the pills and he confessed to me.

8 Q When he confessed to you, he also expressed to you  
9 the potential that he might try to harm himself?

10 A He say, if they take me in, I'm going to kill  
11 myself, I'm going to swallow these pills, I don't want to go  
12 in for 30 years. He's going to ask him what he have done.

13 Q Okay. And after you left him that night or that  
14 afternoon, did you call anyone to report that he had  
15 discussed the potential of harming himself?

16 A No, I did not.

17 Q Now, as I understand what you're saying today, is  
18 that Mr. Sacco confessed to you that he had a sexual  
19 relationship with a minor, is that what you're saying?

20 A That's exactly what he said. And that she was 12  
21 and that she was a prostitute.

22 Q Okay. And also that he could get 30 years?

23 A That's what he verbalized.

24 Q And the first time that you disclosed that  
25 confession was last Friday, correct?

1           A     That's correct.

2           Q     And that was after you met Thursday night with Mr.  
3 Lovric and Mr. Lyons?

4           A     That was the morning before walking here.

5           Q     That 30-year sentence, where did that come from?

6           A     You can ask your client. That's what he said. He  
7 says, I've been in before for nine or ten years, something  
8 like that, so if they get me, they're going to give me 30  
9 years.

10          Q     He specifically mentioned 30 years?

11          A     Thirty years. And he even say, I remember right  
12 now, my face is going to be in all the papers.

13          Q     So he was in rough shape at that time that day  
14 before you found him.

15          A     What would you say if you find somebody in that  
16 situation?

17          Q     I'd say he was in rough shape. But you didn't do  
18 anything to help him?

19          A     I didn't know what to do. I was paralyzed. I was  
20 stunned about the situation.

21          Q     You were paralyzed?

22          A     Meaning, not paralyzed, I couldn't walk. Meaning I  
23 didn't know what to do, what not to do. I didn't know what  
24 to believe or not to believe.

25          Q     You grew up in another country, you came to America

1 and you built a very, very successful business. You've been  
2 through a hard time, but you were paralyzed in this  
3 situation?

4 A I want to rephrase myself. Let's take paralyzed  
5 aside. I was not paralyzed. I was -- I didn't know what to  
6 believe or what not to believe. It's like at one point you  
7 want to connect all the dots, I guess, you know. When he  
8 mentioned this about this girl, then you think, you know,  
9 about the pictures he show me before about these other girls  
10 in the past, you know, there are things I guess that when you  
11 have trust in somebody, you -- you don't really see that part  
12 of the person, and I guess, you know, at that point is  
13 like -- I didn't know what to do or not to do. I asked Luis,  
14 which this guy living there --

15 MR. FISCHER: I'm going to interrupt you at  
16 this point.

17 A M-m h-m-m. I asked him to keep an eye on him.

18 Q I'm going to interrupt you at this point.

19 A M-m h-m-m.

20 Q I'm not trying to put words in your mouth. I'm  
21 asking you -- it was your word, paralyzed. Were you  
22 paralyzed, or you want to change that?

23 A I want to change that.

24 Q Okay.

25 A Meaning that I was paralyzed, apparently not what I

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1 what I wanted to --

2 MR. FISCHER: I want to interrupt.

3 THE COURT: Hold on.

4 MR. FISCHER: And if there's an explanation, I  
5 withdraw that. I ask that the witness be directed only to  
6 answer the questions that I ask him.

7 THE COURT: Well, I think he understands that,  
8 but I'll tell him to do that. Okay.

9 THE WITNESS: Okay.

10 THE COURT: Okay.

11 BY MR. FISCHER:

12 Q How much time passed between the time when you  
13 found Mr. Sacco at your apartment and the time that Agent  
14 Steve and state police officer Santiago came to your house?

15 A I'm sure if you want an exact time because I -- I  
16 can't recall that kind of time -- the day he was checking  
17 into the hospital, that was the night before, and then -- and  
18 then there should be documentation when the detective came to  
19 my house, I'm sure dates, and that would be the time. So  
20 that will give you an accurate time. I'm sure you'll have  
21 the perfect dates.

22 Q Do you know how long that was?

23 A I'm sorry?

24 Q Do you know how long that was?

25 A Pardon me?

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1 Q Do you know how long that time frame was?

2 A No, I don't know.

3 Q Okay. After Mr. Sacco made this confession to you,  
4 did you go home?

5 A Yeah. Probably have things to do.

6 Q Did you speak with your wife about it?

7 A No.

8 Q Why not?

9 A Could I explain the answer?

10 Q At that time, at that time you hadn't received --

11 A My wife --

12 Q Let me ask you the question.

13 A I ask you --

14 Q Let me ask the question, if I may. You can answer  
15 my questions, okay?

16 A M-m h-m-m.

17 Q At that time when this confession was made, you  
18 hadn't received any letters from Mr. Sacco from jail, am I  
19 correct?

20 A When he confess to me, he was not in jail. He was  
21 in the apartment.

22 Q And you had not at that time received any letters  
23 addressed to you from Mr. Sacco in jail --

24 A Yes, I receive after.

25 Q -- before that time? After, exactly.

1           A     How he going to send me a letter from jail when he  
2 didn't go to jail yet?

3           Q     Exactly. So, after Mr. Sacco confessed to you, and  
4 before you ever received any letters from him from jail?

5           A     Correct.

6           Q     Okay. During that time frame, did you ever discuss  
7 this matter with your wife?

8           A     I never told her up until the day I told here that  
9 morning to the officers that he confessed to me.

10          Q     Did you have -- Between the time Mr. Sacco  
11 confessed to you and the time that you received any letters  
12 from Mr. Sacco from jail, during that time frame did you ever  
13 have any discussions with your wife about Mr. Sacco and  
14 anything that Mr. Sacco said to you relating to this matter?

15          A     Repeat the times. What you say, from where to  
16 where? I'm sorry.

17          Q     From the time Mr. Sacco confessed --

18          A     Okay, that day, yes.

19          Q     -- to you to the time you received any  
20 correspondence from Mr. Sacco while he's in jail, during that  
21 time frame did you have any conversations with your wife  
22 about Mr. Sacco and anything that relates to this matter?

23          A     The next morning when Luis called me -- Luis is one  
24 of the roommates, Luis Medina -- he called me up I would  
25 guess about five in the morning -- for accurate times, I'm

1 sure we can track the phone calls on my cellphone if you want  
2 a specific time. I got up, took him to the hospital, came  
3 back and explained to her that he took all his pills and  
4 drink whatever wine he drunk, and I took him to the hospital.

5 Q At that point you did not disclose to your wife  
6 that Mr. Sacco had made a confession concerning a crime to  
7 you --

8 A I didn't --

9 Q I'm not done with my question. May I finish my  
10 question?

11 A Yes, you may.

12 Q That day that you took Mr. Sacco to the hospital,  
13 you didn't come back and have a discussion with your wife  
14 about this confession?

15 A I never did up until last Friday, period. And I  
16 can give you a reason why, which I like to explain.

17 Q I understand. I understand that.

18 A Couple reasons why.

19 Q But I'm not asking you that question. I'm asking  
20 you whether --

21 A I think I answered you many times, no, I did not  
22 spoke with my wife up until last Friday.

23 MR. FISCHER: Thank you.

24 Q Do you use marijuana on a regular basis?

25 A Occasionally.

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1 Q How frequently is occasionally?

2 A Maybe once a month.

3 MR. FISCHER: Those are all the questions I  
4 have. Thank you.

5 THE COURT: All right. Miss Peebles.

6 CROSS-EXAMINATION

7 BY MISS PEEBLES:

8 Q Mr. DiFiori, you're an intelligent guy, wouldn't  
9 you say?

10 A You could say so.

11 Q And you're fairly worldly. Have you a lot of  
12 contact with a variety of different people, that fair to say?

13 A Yes, I do.

14 Q And you trusted Mr. Sacco, that's what you stated,  
15 right?

16 A Yes, I did.

17 Q Now, you had a conversation with a gentleman about  
18 you said a lady, do you remember that? You were talking on  
19 cross-examination on Friday?

20 A I have a conversation with a gentleman.

21 Q On behalf of a lady. Do you remember that someone  
22 called you about this case?

23 A M-m h-m-m.

24 Q On behalf of a lady? Do you remember?

25 A Yes.

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1 Q Yes. And that was around --

2 A I believe who the person who was -- and I think was  
3 a male, I think so, first called my wife. My wife says, you  
4 know, I think she passed me the phone, they're going to call  
5 you. I was doing something. They asked me if I knew some  
6 lady, they say a name. I didn't know the name.

7 Q All right. You had a conversation, and that was  
8 sometime around the first or second week of April, first week  
9 of April 2008, is that about right?

10 A April. Could be. I guess could be about a month,  
11 month and a half ago. I mean, I don't know the dates  
12 exactly.

13 Q I'm going to play something for you and ask if you  
14 remember it.

15 A Okay.

16 (Playing videotape)

17 MR. LOVRIC: Is this in evidence?

18 THE COURT: Hold on. Turn it off. Mr.  
19 Lovric, what's the problem?

20 MR. LOVRIC: Is it in evidence?

21 THE COURT: No.

22 MISS PEEBLES: No.

23 MR. LOVRIC: Well, then it should be played  
24 for the witness only, Judge, if it's being used to refresh  
25 his recollection.

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1 THE COURT: Is this an attempt to refresh his  
2 recollection?

3 MISS PEEBLES: Yes -- not necessarily, no,  
4 Judge. It's a combination of purposes.

5 THE COURT: Well, you should probably offer  
6 it, shouldn't you?

7 MISS PEEBLES: Your Honor, I'll offer this  
8 conversation in evidence at this point, unless the government  
9 has objections.

10 THE COURT: All right. Before the government  
11 objects or does not object, could you please enlighten the  
12 Court as to whom this conversation is between.

13 MISS PEEBLES: This witness and my  
14 Investigator Richard Haumann.

15 THE COURT: That identifies it properly.

16 Mr. Lovric?

17 MR. LOVRIC: I never heard it so if I can hear  
18 it, I can say I have no objection or -- or an objection. I  
19 have no idea what's on it.

20 THE COURT: It's like surprise evidence.

21 MR. LOVRIC: It's like my exhibits. I'd like  
22 to look at it. I'd just like to hear it so I can hear it. I  
23 have no idea what's on it.

24 THE COURT: Ladies and gentlemen, you want to  
25 step outside.

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1 (Jury excused)

2 THE COURT: Just so the record has its  
3 reference, my recollection is on Friday afternoon, Miss  
4 Peebles said at side-bar -- and I can't remember who was  
5 there but the record will probably reflect that -- that she  
6 had a recording I believe of Mr. DiFiori and that she was  
7 going to play it on cross-examination, or words to that  
8 effect. So, do you recall that, Mr. Lovric?

9 MR. LOVRIC: I recall the conversation, yes,  
10 Judge. I think she said she was going to offer it into  
11 evidence. I'd just like to hear it because I don't know  
12 what's on it, Judge.

13 THE COURT: I understand that.

14 MISS PEEBLES: I can play it now.

15 Should the witness be excused from the  
16 courtroom, your Honor?

17 THE COURT: Yes. Why don't you step down.  
18 Stick around outside so we can find you.

19 (Witness steps down)

20 (Playing conversation)

21 THE COURT: If you want to play it privately  
22 for Mr. Lovric, that's fine.

23 MR. LOVRIC: I just want to hear it.

24 MISS PEEBLES: I have a transcript as well.

25 THE COURT: Whatever you want to do.

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1 MR. LOVRIC: I have no objection, Judge.

2 THE COURT: Okay. You want to bring the jury  
3 back in.

4 (Jury present)

5 THE COURT: All right. Miss Peebles, you may  
6 play that recording for the jury.

7 MISS PEEBLES: Thank you.

8 (Playing tape)

9 BY MISS PEEBLES:

10 Q That was you?

11 A Yes.

12 Q Mr. DiFiori, you think you read maybe one too many  
13 newspaper clippings about this case?

14 A Pardon me?

15 Q Do you think maybe you read one too many newspaper  
16 clippings about this case before you came here and testified?

17 A If I what?

18 Q You think you might have read a couple of newspaper  
19 articles before you came here and testified on Friday?

20 A I only have seen one newspaper article.

21 MISS PEEBLES: Thank you.

22 THE COURT: Mr. Lovric.

23 REDIRECT EXAMINATION

24 BY MR. LOVRIC:

25 Q Just a couple of questions.

1 A Yeah.

2 Q Mr. DiFiori, after Mr. Sacco went to jail, did he  
3 send you any letters from jail?

4 A Yes, he did.

5 Q I'd like to show you what's marked as Government  
6 Number 96.

7 If you take a look at this piece of paper, do you  
8 recognize what that is?

9 A Yes.

10 Q What is that?

11 A This is I believe the, if I recollect, third letter  
12 Dean send me from jail.

13 Q Okay.

14 MR. LOVRIC: I would offer number 96 into  
15 evidence.

16 MR. FISCHER: I object, your Honor. I don't  
17 think that in evidence it's necessary -- I don't think it's  
18 appropriate as a document in evidence.

19 THE COURT: Necessary, I take it you mean  
20 relevant? Or are you saying it's a 403 objection,  
21 cumulative?

22 MR. FISCHER: Both relevance, 403, and it is  
23 an out-of-court statement and therefore hearsay as third.

24 THE COURT: Sure, it's hearsay. It would be  
25 an admission.

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1 I'd like to see that document, if I could.  
2 Thank you, Mr. DiFiori.

3 THE WITNESS: You're welcome.

4 THE COURT: Well, the Court has reviewed the  
5 document and believes that it can be admitted over the  
6 hearsay objection and 403 objection, and will receive it in  
7 evidence.

8 BY MR. LOVRIC:

9 Q Mr. DiFiori, you can look on your screen on the  
10 right there. I'm going to put Government 96 --

11 A There is nothing here.

12 Q It will be there.

13 Do you see that?

14 A Yes, I do.

15 Q This is the letter you received from Mr. Sacco?

16 A Yes, I did.

17 Q Could you read that for us, please.

18 A "You have not responded to any letters I have sent  
19 regarding my US passport and my other personal belongings. I  
20 am going to assume that you let the Mexicans have my property  
21 without my permission. I will deal with you when I get out,  
22 which is going to be sooner than you think."

23 Q After you received this letter from Mr. Sacco, how  
24 did you take this letter as far as what he was saying when he  
25 gets out?

1           A     I -- he was threatening me.

2                     MR. LOVRIC: That's all I have, Judge.

3                     THE COURT: Mr. Fischer.

4                     MR. FISCHER: Thank you, your Honor.

5 RE CROSS-EXAMINATION

6 BY MR. FISCHER:

7           Q     What's the date of that letter, sir?

8                     THE COURT: You want to know the date, Mr.  
9 Fischer?

10                    MR. FISCHER: Yes, your Honor.

11                    THE COURT: I think Mr. Lovric has the letter.

12           Q     I'll show you Government's Exhibit 96.

13           A     Yes.

14           Q     What's the date of that letter?

15           A     There is no date in the letter.

16           Q     When did you get it?

17           A     After the other two he sent me. The other two have  
18 the date. This one did not have a date.

19           Q     Did you review that document in preparation for  
20 coming here to testify?

21           A     I gave this document the first day the officer that  
22 visit my house. And they gave me receipt for letters I gave  
23 them. I didn't keep any copies.

24           Q     Did you review -- In the past three or four days,  
25 other than sitting here as a witness, have you reviewed any

1 documents?

2 A You mean these documents. I give this up. I  
3 didn't have this in my possession. Officer -- I believe it's  
4 officer Steve Santiago -- I don't recall the last name --  
5 when they came to my house first time, I gave them all the  
6 letters, they gave me a receipt, and they took this letter  
7 from me, and I never have access to this again.

8 Q Listen to my questions.

9 A Yes.

10 Q In the past three or four days, have you reviewed  
11 any documents concerning this case?

12 A They gave me documents in regards to my hotel,  
13 where I'm going to stay. I fill in some papers. I -- in  
14 regards to mileage and everything related to expenses I will  
15 have coming here.

16 Q Did you review that exhibit in the past week?

17 A There's no way I could review it. It wasn't in my  
18 possession.

19 Q So nobody showed it to you?

20 A No.

21 Q Okay. Did you speak with anybody from the FBI over  
22 the weekend since you were here last Friday?

23 A No.

24 Q Have you spoken with anybody from the government  
25 about this matter since last Friday?

1 A No.

2 Q You also wrote letters to Mr. Sacco while he was  
3 incarcerated, am I correct?

4 A Answer to this letter. Before doing that, I call  
5 his mother.

6 Q I just asked if you wrote to him.

7 A Yes. Okay.

8 Q You did write to him?

9 A Yes, I did write a letter to him.

10 Q Just one letter?

11 A One letter.

12 Q Let me ask you a little bit about your conversation  
13 with the investigator.

14 A Well, it was in --

15 Q Yes. When the investigator called you, did he  
16 explain to you what he was calling you about?

17 A He was calling and asking me if I knew about a  
18 house that Dean Sacco have upstate and that sort of  
19 conversation, if I recollect correctly. I'm sure you have  
20 exactly every word I say on the phone and was in the  
21 recording, but that's basically -- if you don't put that in,  
22 I have to remember the conversation. He asks -- asking me  
23 how much I know about the house he have upstate, and all I  
24 knew about the house, he would ask me -- he would consult me  
25 on, you know, change the boiler. He mentioned once that he

1 wanted to do an apartment in the garage, I believe, and that  
2 sort of thing related to that.

3 Q You specifically remember that it was a boiler that  
4 he was changing?

5 A Yeah. He told once that he need to change the  
6 boiler because winter was coming, I believe, or something of  
7 that and, you know, because the house has no heat, the boiler  
8 broke down, he mention.

9 Q How often did he come up to Norwich to work on the  
10 house, how frequently?

11 A I don't know. I mean, maybe he came once a week,  
12 every two weeks, I have no idea.

13 Q Does that sound about right, once a week, once  
14 every two weeks?

15 A If he was coming up here or I wouldn't know where  
16 somebody was going, how could I know.

17 Q He was gone many weekends?

18 A I would say yeah. Most weekends.

19 Q And he was talking to you during this time about  
20 the work he was doing in Norwich upon this house?

21 A He probably throughout the time of this house,  
22 maybe three or four times he would mention. One time he  
23 mentioned, we scraping all the floors in the kitchen. Then  
24 another time about the apartment, he wanted to put in the  
25 garage. Another time about the boiler change and that kind

1 of thing, pretty much.

2 Q Mr. Sacco owes you a substantial amount of money,  
3 am I correct?

4 A I don't consider he owes me --

5 Q It may not be substantial or --

6 A Not really.

7 Q How much money does Mr. Sacco --

8 A I have no idea because I never care about getting  
9 money back from him up until -- up until this happen. I was  
10 sort of helping him out. I never care to even receive  
11 anything. I was always telling him, you know, do as much as  
12 you can to pay me, and I just put a figure to that room he  
13 was there, just to give him a hand. Today I have three  
14 tenants behind on rent. I wish they can pay me, I wish they  
15 can pay me, because then they're in a good position because I  
16 can pay my mortgage, since I'm fine. Money to me is not an  
17 object on this. As a matter of fact, if -- the first letter  
18 he sent me from jail, he's asking me for \$20 if I can send  
19 him, and he's bragging about how nice I've been to him  
20 always.

21 Q Would it be fair to say that he owes you at least  
22 \$10,000 in rent?

23 A No.

24 Q Okay. His rent at the first place he lived there  
25 was \$750 a month, am I correct?

1 A Yes.

2 Q And he lived there for approximately how long, a  
3 year?

4 A I don't think it was a year, but let's say it was a  
5 year.

6 Q All right. And the second place that he lived that  
7 you owned?

8 A Let me go back. When he could not pay me the full  
9 750, he told me, I cannot pay all this amount. He even tell  
10 me, do you mind bringing the rent down. How much can you  
11 pay, can you pay 500, 550, I have no problem. Pay me 550.  
12 That apartment today, my parents are visiting me and they're  
13 staying in that apartment. It's an apartment that, you know,  
14 even originally I had built for family visiting me from  
15 Argentina so I have an extra room so we don't have to be all  
16 cramped up. Friends of mine, you know, needed an apartment,  
17 they come to visit for a little while, I will use it. When I  
18 met Dino at Manhattan Club, that apartment was empty. When  
19 he mention he needed an apartment, listen, I have an  
20 apartment there if you need, come check it out. If you like  
21 it, I have no problem, you can rent it out.

22 Q How long did Mr. Sacco live in the second  
23 apartment?

24 A Maybe six months. Just a guess.

25 Q What was the rent there?

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1           A     I believe I told him, just give me \$75 a week, you  
2 know, something of that. It's not expecting -- he couldn't  
3 pay -- the other apartment was too much. At this time I  
4 learned through him, you know, he -- I guess at the time he  
5 considered me my friend and he will tell me things and he  
6 told me one thing he have done in the past, a long time ago,  
7 that he was in for like nine, ten years.

8           Q     May I interrupt you, please.

9           A     Yes.

10                   MR. FISCHER: Your Honor, I'm going to look to  
11 the Court for an objection. First, move to strike. My  
12 question was, how long did he live there. I move to strike  
13 the balance of any answer.

14                   THE COURT: I think the last question you  
15 asked him before he -- What was the rent there, according to  
16 the record?

17                   THE WITNESS: Seventy-five dollars.

18                   THE COURT: According to the record.

19                   MR. FISCHER: Thank you.

20           Q     Did he pay you?

21           A     Once in a while, yes; once in a while, no.

22           Q     Is it consistent with your recollection that he  
23 owed you probably at least several thousand dollars in rent?

24           A     No.

25           Q     How much do you believe he owed you?

1           A     I don't even have a number. I never care to  
2 collect the rent from him.

3           Q     More than a thousand?

4           A     When you have somebody that you're helping out,  
5 like I have done my whole life and barely can pay \$75, it  
6 doesn't matter to me if they can come up or not. To me, if  
7 they can come up with the money, because for themselves, they  
8 create a habit of paying rent. If you let somebody live for  
9 free somewhere and they don't pay you anything, then it  
10 becomes taking advantage side of the picture.

11          Q     Listen to my questions.

12          A     Yes.

13          Q     Listen to my questions. Do you know how much money  
14 Mr. Sacco owed you?

15          A     No.

16          Q     Okay.

17                   MR. FISCHER: Thank you. Those are all the  
18 questions.

19          A     I don't consider he owes me money.

20                   THE COURT: Hold on. Hold on. There's no  
21 question pending.

22                   MISS PEEBLES: I have no more questions.

23                   THE COURT: Mr. Fischer, you're all set?

24                   MR. FISCHER: All set.

25                   THE COURT: Mr. Lovric?

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1 MR. LOVRIC: I have no further questions,  
2 Judge.

3 THE COURT: Okay. Thank you, sir. You may  
4 step down.

5 (Witness excused)

6 THE COURT: Mr. Lovric?

7 MR. LOVRIC: Judge, the next witness is going  
8 to be FBI agent Jim Lyons. I didn't know if the Court wanted  
9 to take a break. I need to set up my laptop real quick.

10 THE COURT: Okay. We'll take a break now.

11 (Jury excused)

12 (Jury present)

13 THE COURT: Okay, Mr. Lovric.

14 MR. LOVRIC: I would call our next witness,  
15 FBI agent James Lyons.

16 THE CLERK: Please state your name for the  
17 record.

18 THE WITNESS: James T. Lyons, Jr.  
19  
20  
21  
22  
23  
24  
25

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1 J A M E S L Y O N S, J R., having been called as a witness,  
2 being duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. LOVRIC:

5 Q Good morning, Agent Lyons.

6 A Good morning, Mr. Lovric.

7 Q Agent Lyons, if you could just, for the members of  
8 the jury, again, tell them your full name, where you work,  
9 and what kind of work you do.

10 A My name is James T. Lyons, Jr. I'm a special agent  
11 with the Federal Bureau of Investigation. I've been with the  
12 FBI slightly over 11 years, and all 11 years I've been here  
13 at the Binghamton office. I investigate a variety of  
14 criminal offenses to include -- in the past I've done gang  
15 investigations, drug investigations, and I've also conducted  
16 investigations involving the sexual exploitation of children.

17 Q Agent Lyons, at some point, did the FBI become  
18 involved in an investigation dealing with Mr. Sacco and Miss  
19 Linda O'Connor?

20 A Yes, sir.

21 Q Approximately when was it that the FBI became  
22 involved?

23 A It was about January 17, 2008.

24 Q And at the time that the FBI became involved, what  
25 other agency or agencies were involved in that investigation

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1 at that time?

2 A Norwich Police Department and the New York State  
3 Police and the Johnson City Police Department.

4 Q And at the time that the FBI became involved then,  
5 did you become the lead FBI agent in the matter?

6 A Yes, sir.

7 Q Now, at the time that your involvement in the  
8 investigation commenced, at that time was Mr. Sacco already  
9 in custody at that time?

10 A Yes, he was.

11 Q Where was that, in relation to what?

12 A It was in relation to an arrest on some state  
13 charges. He was in the Chenango County jail.

14 Q And at the time of the FBI's commencement of the  
15 involvement, had Miss O'Connor been charged in relation to  
16 this case anywhere?

17 A No, sir.

18 Q Did there come a point in time when both Linda  
19 O'Connor and Dean Sacco were charged in connection with the  
20 federal charge?

21 A Yes, sir.

22 Q About what date was that?

23 A February 10, 2008.

24 Q And after the federal involvement by the FBI  
25 commenced, were there certain investigative techniques and

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1 investigative things that were done in terms of pursuing  
2 additional evidence or gathering additional evidence?

3 A Yes, sir.

4 Q I'd like to talk about a couple of those and ask  
5 you some questions. Are you familiar with a search warrant  
6 done at 14 Miller Street?

7 A Yes, I am.

8 Q And who was -- whose residence was it that was  
9 searched at that residence?

10 A It was the apartment of Linda O'Connor.

11 Q When was that search warrant done, approximately?

12 A It was done the week after Miss O'Connor's arrest I  
13 believe in February 6, 2008.

14 Q And then are you familiar with the search warrant  
15 conducted at a place called The Storage Center on Unit 129?

16 A Yes, sir. Yes, sir.

17 Q And whose storage unit was searched at that  
18 location?

19 A Mr. Dean Sacco's.

20 Q In fact, Agent Lyons, were you also in fact present  
21 during the execution of that search warrant?

22 A I was.

23 Q Now, did there also come a point in time when a  
24 search warrant was executed at 45 Fair Street?

25 A Yes, sir.

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1 Q Approximately when was that search warrant  
2 executed?

3 A I believe that was March 24 of 2008.

4 Q And were you also present at that location?

5 A Yes, I was.

6 Q And did there come a point in time when a DNA  
7 sample was taken from Shannon O'Connor in connection with  
8 this case?

9 A Yes, sir.

10 Q And were you also present when that was conducted?

11 A Yes, I was.

12 Q And who else was with you at that time?

13 A Investigator Terry Shultz from the New York State  
14 Police.

15 Q And did that occur sometime around April 4 of this  
16 year, April 2 of this year?

17 A April 2, yes, sir.

18 Q Now, Agent Lyons, in connection with this  
19 investigation, did you also personally travel to the state of  
20 New Jersey to interview certain individuals and to obtain  
21 certain evidence?

22 A Yes, I did.

23 Q Approximately when was it that you traveled to New  
24 Jersey?

25 A Traveled to New Jersey on March 4 of 2008.

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1           Q     And then were you in the New Jersey area for  
2 approximately a couple of days?

3           A     Yes, sir.

4           Q     Now, at some point while you were in New Jersey --  
5 Let me just narrow it down. Approximately what city or what  
6 area were you conducting these investigations down in New  
7 Jersey?

8           A     Jersey City, New Jersey and Hillside, New Jersey.

9           Q     And when you were there, did you have the  
10 opportunity to meet with a person by the name of William  
11 Sorvino?

12          A     Yes, I did.

13          Q     And did you speak to Mr. Sorvino while you were  
14 there?

15          A     Yes, sir.

16          Q     At some point in time did Mr. Sorvino turn over to  
17 you certain items and materials?

18          A     Yes, he did.

19          Q     Can you describe generally what it was that he  
20 turned over to you or gave to you.

21          A     He provided me with two boxes of materials that I  
22 understood to be Mr. Sacco's personal belongings from his  
23 prior place of employment at Glenwood Furniture. The  
24 belongings were numerous audio cassette tapes, a number of  
25 small 8-millimeter or video cassette tapes, and there was an

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1 audio recorder in the box, and also there was a folder  
2 containing personal paperwork and documentation of Mr. Sacco.

3 Q And did you have a chance to review and to go  
4 through all of those materials?

5 A Yes, I have.

6 Q And in that folder or file that you mentioned, were  
7 there a number of different kinds of documents and items,  
8 whether it be documents or some type of personal items  
9 belonging to Mr. Sacco?

10 A Yes, sir.

11 Q Okay. Now, Agent Lyons, I'd first like to show you  
12 what's already in evidence as Government's Exhibit Number 64.  
13 Agent Lyons, I'd like to show you Government Exhibit 64, and  
14 it's already in evidence, and I believe one of the counsel  
15 already read parts of that, and I'd ask you if you could take  
16 a look at that exhibit and read the entire first page of that  
17 exhibit. First page being front and back sides.

18 A First page at the top says, Norwich jail, telephone  
19 (607)337-1967. Norwich weather, 33/18, snow. It's dated 07  
20 April 2007. Dear Bill --

21 THE COURT: When was that offered and received  
22 in evidence?

23 MR. LOVRIC: It came in through Mr. Sorvino.

24 THE COURT: Let me just look.

25 MR. LOVRIC: Then I think Miss Peebles had the

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1 witness read a paragraph of it. It's number 64.

2 THE COURT: Yeah, I know it's 64.

3 Okay. I've got it. Go ahead.

4 THE WITNESS: Thank you, Judge.

5 A Just so I understand you clearly, Mr. Lovric, you  
6 want me to read the front and back of the first page?

7 Q That's correct.

8 A Dear Bill: First of all, I'd like to express my  
9 thanks for all of the love, support and advice you gave me  
10 since hiring me on the 27th of February 2002. Please don't  
11 feel that any of it was in vain. I grew a lot with you guys.  
12 I liked myself a lot more because of your belief in me,  
13 earned more money and had a better life-style than ever  
14 before. For every mozzarella or Chinese lunch, for every  
15 paycheck and commission and for every word of wisdom, I will  
16 never forget. Thank you. Unfortunately, Bill, in the area  
17 of my most personal needs, namely, that of the opposite sex,  
18 you could not help. Because of that particular deficit in my  
19 own human need to be loved by a female and a female I could  
20 love back, I sit here in jail today. There is nothing you or  
21 Tim or Raffi could have done, nor should you have had to do.  
22 You guys did good things for me, great things for me, and I'm  
23 a better man because of it. It's another hard lesson for me,  
24 Bill, a lesson you know doubt feel I should not have needed  
25 to undertake, but I'm here undertaking it. Lucky, I guess,

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1 to be in a brand new jail in Norwich. If we are extremely  
2 fortunate, my lawyer Scott Clippinger (607-336-4657) says I  
3 will be able to plea bargain to a class D charge. That would  
4 put me in the slammer for about three years. And this may  
5 only be possible because a separate murder and attempted  
6 murder are foremost in the headlines in Norwich and the court  
7 system is overwhelmed. Clearing up my case ASAP will appeal  
8 to them, and of course the charges come from my tenants  
9 downstairs. I'm enclosing a note to the JCPD on Summit  
10 Avenue. They have my wallet, cellphone and watch. I'm only  
11 asking your help to retrieve my wallet, cell and watch, that  
12 someone place those items and my office stuff into a box and  
13 mail it to my mother, E.M. Dinunzio, 44 Center Street, 8-P,  
14 (203)768-7224, Waterbury, Connecticut, 06702. I beg of you  
15 to help me tie up these loose ends and of course any further  
16 mail could be labeled, quotes, return to sender, end quotes.  
17 I am praying that your pals at JCPD will allow you or a rep  
18 from Grandview to retrieve my wallet and phone. My license,  
19 Social Security and birth certificate are in there. I'll  
20 continue to stay in touch, Bill, and keep you posted of  
21 events. I still value you as my friend and hope your love  
22 for me was not conditional. I look forward to coffee and  
23 mots with you again. You'll be 74 and me 52 (I hope). Have  
24 a healthful (?) day. Love, Dino."

25 Q Agent Lyons, I'd like to next show you what I

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1 marked as Government's Exhibit 65 and 66.

2 MR. FISCHER: Can I have just a moment, your  
3 Honor?

4 THE COURT: Sure.

5 MR. FISCHER: Thank you, your Honor.

6 THE COURT: You're welcome.

7 BY MR. LOVRIC:

8 Q Agent Lyons, if you could look at Government  
9 Exhibit 65 and 66, and I'd like to ask you some questions  
10 about those two items. Looking first at 65, do you recognize  
11 what that is?

12 A Yes, I do.

13 Q What is it?

14 A It's the United States passport for Dean Sacco.

15 Q And where did that passport come from, if you know?

16 A This was in the folder that I received from  
17 Mr. Sorvino in New Jersey.

18 Q Okay. Among those two boxes of items that was  
19 handed over to you?

20 A Yes, sir. It was in a folder that was provided to  
21 me in addition to the two boxes.

22 Q And then looking at Government Exhibit 66, what is  
23 that?

24 A This is paperwork for a Mitsubishi vehicle in the  
25 name of Dean Sacco, color red, and also it looks like a sales

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1 sticker that's attached to it.

2 Q Where did that item come from, Exhibit 66?

3 A This was in the same folder as Mr. Sacco's  
4 passport.

5 MR. LOVRIC: Your Honor, I would offer  
6 Government 65 and 66 into evidence.

7 MISS PEEBLES: No objection.

8 MR. FISCHER: Your Honor, with respect to 66,  
9 the Mitsubishi agreement, I have no objection. With respect  
10 to 65, if it's offered to prove the truth of matters asserted  
11 in there, I object because it's hearsay.

12 THE COURT: Isn't there an exception to that  
13 in the rules and regs under 800, documents, official  
14 documents? Let me just take a look.

15 MR. FISCHER: I'm not sure that there's --

16 THE COURT: Let's look and see if I'm  
17 misremembering.

18 What do you say, Mr. Lovric, does that fit in  
19 any of those exceptions?

20 MR. LOVRIC: I believe it is, Judge. I  
21 believe it's an officially issued document by official  
22 governmental agency, that has always included birth  
23 certificates, passports, driver's licenses, visas, those  
24 documents are self-authenticating, and they in fact are  
25 official documents issued by the governmental entity.

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1 THE COURT: Which one is that?

2 MR. LOVRIC: What the exhibit is, Judge?

3 THE COURT: No, it's 803 sub what, 9?

4 MR. LOVRIC: Judge, I don't have the code in  
5 front of me.

6 THE COURT: Here. You want to take a look at  
7 mine?

8 MR. LOVRIC: Sure.

9 THE COURT: I know there are four or five  
10 which it could fit under, but I'm not sure which one you're  
11 offering it under.

12 MR. LOVRIC: I think it's under 803(8), public  
13 records and properties. Talks about --

14 THE COURT: What do you say about that, Mr.  
15 Fischer? Do you have a book?

16 MR. FISCHER: No, your Honor. I understand  
17 the general tenet of the rule and I recall it. If it is  
18 authenticated, it is admissible as an exception. I'm not  
19 sure that I concur with Mr. Lovric with respect to the  
20 self-authentication aspect of that evidence. I'm not sure  
21 there's a foundation then, if it's being offered, in that  
22 exception for the admission of the evidence at this time.

23 THE COURT: I think they're  
24 self-authenticating. Is that what you're offering it under?

25 MR. LOVRIC: I was going to go to the

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1 self-authentication section, your Honor, but I believe it is  
2 self-authenticating.

3 THE COURT: Right. I do too. I'm not  
4 concerned about that one. I was wondering which section you  
5 were under 803 sub --

6 MR. LOVRIC: Eight.

7 THE COURT: All right. The Court will receive  
8 Government's Exhibit 65 and 66 in evidence.

9 By MR. LOVRIC:

10 Q Agent Lyons, looking at Exhibit 65, I'll just  
11 briefly put it under the document camera. Do you recall  
12 that's the US passport, Exhibit 65?

13 A Yes, sir.

14 Q Are there indications on that document as to what  
15 country Mr. Sacco traveled to?

16 A Yes, sir. The June 13, 2006 stamp is Dominican  
17 Republic, as is the January 15, 2006 stamp.

18 Q And then are there a couple of other entries here  
19 in the passport also indicating travels to the Dominican  
20 Republic?

21 A I don't recall. I'd have to see.

22 Q Actually, I'm sorry. They were all on that page.  
23 Excuse me. So the passport does indicate travels to the  
24 Dominican Republic?

25 A Yes, sir.

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1 Q Now, Exhibit Number 66 in evidence. I'll just put  
2 that briefly on the document camera. And that indicates the  
3 lease of what type of a vehicle?

4 A It's a red Mitsubishi 2006 Galant.

5 Q And that's dated on the first line there, what date  
6 does that have?

7 A December 22, 2005.

8 Q Now, Agent Lyons, among the materials in those  
9 boxes that you recovered from Mr. William Sorvino, can you  
10 describe some of the items that you recovered and saw in  
11 those two boxes?

12 A Yes, sir. There were numerous audiocassette tapes.  
13 There was an audio recorder. There were 13, if I recall  
14 correctly, 8-millimeter video cassette tapes in there.  
15 That's the general nature of what was contained in those  
16 boxes.

17 Q Okay. Now, the 8-millimeter videotapes, did you  
18 have a chance to view those tapes, approximately 13 tapes?

19 A Yes, I did.

20 Q And on what did you view them on?

21 A I viewed them on the video camcorder that was  
22 seized during the search warrant of Mr. Sacco's storage shed  
23 up in Norwich.

24 Q I'm going to hold up Government Exhibit Number 36.  
25 The video camera used to view those tapes, is that this video

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1 camera in this bag?

2 A Yes, sir.

3 Q Can you describe what the nature of the materials  
4 that were on the videotapes of the 13 tapes that you viewed.

5 A Yes, there were many hours of video recordings of  
6 Mr. Sacco. Couple of occasions, he videotape recorded  
7 himself while he's riding his bicycle. He rides his bicycle  
8 and holds the camera out so he talks to the camera, and you  
9 can actually see him riding his bicycle. He video recorded  
10 himself at work making phone calls and playing the guitar.  
11 He video recorded himself sitting down with his dad watching  
12 a baseball game. He also videotape recorded himself doing  
13 Italian lessons, lengthy recording where he's reading Italian  
14 into the video camera. And I recall one other one where he  
15 was video recording himself as he had a meal with some  
16 individuals.

17 Q And did you actually watch hours and hours of these  
18 type of self-recordings?

19 A Yes, sir.

20 Q Now, in connection with these 13 or so videotapes  
21 that you reviewed, I've marked as exhibits 69, 70, 71, and 72  
22 short excerpts from these 13 videotapes. Have you had the  
23 opportunity to review and to see and watch exhibit 69, 70,  
24 71, and 72?

25 A Yes, I have.

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1 Q And in connection with exhibit excerpt 69 with  
2 respect to a videotape and a recording studio, did you watch  
3 that excerpt?

4 A Yes, I did.

5 Q In that video recording who was present in that  
6 video itself?

7 A Mr. Sacco and several other men.

8 Q And in connection with that excerpt, is there a  
9 discussion in that video by Mr. Sacco as to why he bought  
10 this video camera?

11 A Yes, sir.

12 MR. LOVRIC: Your Honor, at this time I would  
13 offer Exhibit 69, which is an excerpt of a videotape  
14 recovered.

15 MR. FISCHER: Judge, without knowing what's  
16 being offered, what portion, it's difficult for me to say  
17 whether I have an objection or not.

18 THE COURT: You haven't seen that?

19 MR. FISCHER: I understand what's on it as a  
20 whole. I'm not sure what specifically is being offered, what  
21 portion.

22 THE COURT: Okay. We'll ask the jury to step  
23 aside a minute so we can check that out.

24 (Jury excused)

25 THE COURT: Display that for us, Mr. Lovric.

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1 MR. LOVRIC: Should I play for the courtroom  
2 or Mr. Fischer want to watch it here?

3 THE COURT: However you guys want to do it.

4 MR. FISCHER: I can come over if it's easier.

5 Your Honor, there are three other parts of  
6 these tapes that Mr. Lovric is going to offer, and I can look  
7 at those, take the time now to do that, if you'd like, rather  
8 than doing them one at a time.

9 THE COURT: How long are they going to be in  
10 total, Mr. Lovric?

11 MR. LOVRIC: I think they're each about three  
12 to four minutes. Approximately five minutes, I'd say.

13 THE COURT: Show them to him right now.  
14 Unless there's something else we can do between now and the  
15 lunch hour.

16 MR. LOVRIC: I was going to go into this next  
17 so it has to do with the jury, things that were obtained.

18 THE COURT: All right.

19 MR. FISCHER: Should we address the issues  
20 before the jury comes out, Judge?

21 THE COURT: Please.

22 MR. FISCHER: First of all, I don't see any  
23 evidence concerning the time frame in which these were  
24 supposedly made or taken. I have a foundational objection on  
25 that basis.

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1           Second, I don't know whether they're being  
2 offered as 413, 414 type evidence or whether they're being  
3 offered as primary evidence, rather than character evidence.  
4 And the objections to those are somewhat different. If it's  
5 being offered as 413 and 414 character evidence, the  
6 probative value of it -- Let me address the first tape where  
7 there are the men in the recording studio. There's no  
8 conversation that I heard concerning anything under age.  
9 There are conversations concerning men having sex with women.  
10 There is a discussion about money at some point. It's not  
11 really clear what is being said as I hear it. I'm sure it  
12 can be interpreted in a number of different ways. Its  
13 probative value is somewhat limited in my opinion. It does  
14 establish -- if it's being offered to establish the  
15 purpose -- for the purpose of establishing that Mr. Sacco had  
16 a video camera, and knew how to use it, that's another  
17 purpose, and again, the probative value is relatively  
18 minimal. You are -- the camera in evidence is already pretty  
19 well connected to Mr. Sacco. So, the probative value is not  
20 that strong. The prejudicial value is substantial and  
21 although admissible, I think that the prejudicial value  
22 substantially outweighs the probative value, and I ask 403  
23 preclusion of that evidence or evidentiary ruling. If the  
24 evidence is offered to prove that the discussions related to  
25 the -- specifically the charges in this indictment, that the

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1 events discussed in that conversation are events that are  
2 alleged in this indictment, that's a different issue, but if  
3 that's the purpose of it, there is no foundational evidence  
4 that I can see to support that. So, I object on that basis  
5 as well.

6 With respect to the second tape of Mr. Sacco  
7 riding his bike, getting money out of the ATM really has no  
8 probative value except as I see it, he takes pictures of some  
9 young women walking by and makes a comment, aren't they  
10 pretty, or something to that effect. The probative value is  
11 next to nil, prejudicial value is just heaping on more  
12 irrelevant evidence, and even if admissible under 413, 414, I  
13 think it should be excluded under 403.

14 With respect to the third item, Mr. Sacco  
15 reading or practicing Italian, it cuts in to a picture of a  
16 girl, a young woman, and they have a discussion about  
17 videotape -- videotaping sex. Something to the effect of,  
18 why are you here? Or here you came to us for videotaped sex.  
19 No indication of when that portion of that recording was  
20 made. If it's offered again for the -- as proof that that  
21 videotaping of that girl, if it eventually happened, was part  
22 of the facts alleged in this indictment, that absence of any  
23 proof concerning time frames makes it inadmissible at this  
24 point, I suggest. If it's offered for the 413, 414 evidence,  
25 there's a big pile of that already. It's additional and

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1 cumulative and substantially more prejudicial than probative.  
2 I request preclusion on that basis for the 403 ruling  
3 evidence.

4 The last tape concerns a phone call made to  
5 Mr. Sacco where somebody is calling apparently in response to  
6 an ad, and I've stated the arguments. All the arguments I  
7 made so far concerning the other tapes apply to this as well.  
8 If it's offered as proof that the events that are the subject  
9 of that discussion are the same events alleged in the  
10 indictment, without any reference to time frames being  
11 involved in the time frame that we're discussing here, it's  
12 not admissible. And again, with respect to the 403, 413, 414  
13 aspect of it, I also suggest they're cumulative and minimally  
14 probative and substantially prejudicial on top of everything  
15 we already have.

16 And those are essentially the basis I  
17 understand for the objections that I have at this point.

18 THE COURT: Well, Mr. Lovric, I want you to  
19 address those arguments if you would.

20 MR. LOVRIC: Yes, Judge. First and foremost,  
21 Judge, I go to the general objections and arguments by the  
22 defendant on this. For a number of these excerpts -- there  
23 are four excerpts that we're offering. First of all, these  
24 are excerpts as they're found on original hours and hours of  
25 videotapes.

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1           We first point out to the Court that we're not  
2 seeking to introduce 30 hours of videotapes of Mr. Sacco  
3 videotaping himself and other activities. We've honed in on  
4 what we believe is a total of approximately 20 minutes of  
5 excerpts that are the most relevant and are relevant. The  
6 defense counsel objects to foundation. These tapes were in  
7 Mr. Sacco's custody, tapes he had at his workplace, as  
8 Mr. Sorvino testified, which were gathered up at his  
9 workplace and put into these boxes. They were Mr. Sacco's  
10 belongings and they're his videotapes. In many ways they're  
11 self-authenticating because he is in each one of these videos  
12 and is a speaker in those videos.

13           Thirdly, these videos were produced on the  
14 video camera that was recovered in the storage unit up in  
15 Norwich, New York. So foundation, I submit, is really in  
16 this case -- it's not an issue. The fact is these videotapes  
17 were in his possession, they were found in his possession,  
18 they were created by him because he is in the video and in  
19 fact engages the camera so he knows he's videotaping it. In  
20 fact, in two of the videos he sets two of the videos he sets  
21 up the video camera to show himself.

22           Addressing the prejudicial/probative argument.  
23 Judge, I submit we keep hearing the same objection and I  
24 submit to this Court that it's -- this 403 argument is being  
25 used incorrectly by the defense. 403 deals with evidence

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1 where its probative value may have marginal usefulness and  
2 the impermissible prejudice exists. I suggest to this Court  
3 that the defense here is, when they say prejudice, they  
4 really mean the good kind of prejudice that the government is  
5 allowed to put in, which is direct evidence, and that's not  
6 what 403 stands for. If it's very relevant and it goes to  
7 the heart of an issue at the trial, that's not prejudice.  
8 That's called evidence. The defense would like this Court to  
9 think that everything that hurts the defendant is  
10 prejudicial. Of course it is. All direct evidence of any  
11 sort showing -- tending to show he is guilty is prejudicial  
12 to him, but courts don't exclude that just because it hurts  
13 the defense. Really what's at the heart of 403 is  
14 impermissible prejudice, prejudice that otherwise is not  
15 relevant in the case.

16           Going to the first tape, the excerpt. It's  
17 not prejudicial because it goes to the heart of what this  
18 case is about. In this first excerpt, the defendant, who is  
19 on the video, is talking to several other men in a recording  
20 studio. They're sitting around, and the topic of sexual acts  
21 is being discussed, and during that topic the defendant tells  
22 these other individuals in no uncertain terms that the reason  
23 he bought this video camera, the video camera that's  
24 recording and on, is because he wants and has a plan to  
25 produce pornographic sexual tapes where women are engaging in

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1 sex, and that's the reason for buying this camera. In this  
2 case, it's relevant because we have charged this defendant  
3 with videotaping sexual acts at the Norwich residence with  
4 the minor in this case on a number of occasions. And in fact  
5 the minor will testify that this video camera she recalls at  
6 least on one occasion being used to record the rape in that  
7 apartment. So this excerpt is relevant. It is this  
8 defendant stating his intent in buying this camera and what  
9 he intends to do with it.

10 THE COURT: So you're not at all offering it  
11 under 413, 414 has nothing to do under those sections. It's  
12 402 you're offering it --

13 MR. LOVRIC: It's not 413, 414.

14 THE COURT: That's what I just said. Is that  
15 right?

16 MR. LOVRIC: Yes.

17 THE COURT: Thank you.

18 MR. LOVRIC: Excerpt 2, excerpt 2 is the  
19 videotape of Mr. Sacco riding his bicycle when he's holding  
20 the camera and he's taping himself as he's riding his bike.  
21 On occasions he interacts with the camera. When he gets to a  
22 corner, there are three or four teenage girls, and he pans  
23 the camera over to them and zooms in on their behinds and  
24 makes the comment something like very nice or nice into the  
25 camera. And then he continues, goes to the bank, and then

1 when he exits the bank, there are several -- I think couple  
2 other teenage girls, and he pans his camera onto them. That  
3 is being offered for two purposes: One, it is for 413, 414,  
4 the prior actions of his, which is videotaping teenagers and  
5 stating something that certainly is indicative of his  
6 interest in teenagers. The second is, it is another example  
7 of his utilization, utilizing of a video camera in order to  
8 tape other persons, teenage kids in the course of his  
9 interacting with those teenagers. I submit, again, that this  
10 prejudicial argument really misses the point, in my view,  
11 because it seems to hone in on it's prejudicial because it's  
12 so relevant or it's prejudicial because it is so indicative  
13 of his intentions or his intent.

14 The third video excerpt is an excerpt where it  
15 is clear that Mr. Sacco has deleted what came before and what  
16 comes after because he is reading Italian and then the tape  
17 breaks in and there is a girl who says she's from the  
18 Dominican Republic and then Mr. Sacco quizzes the girl why is  
19 she there, to produce a pornographic videotape, and then it  
20 cuts back out to Mr. Sacco reading Italian. That's the way  
21 we found this video. That's Mr. Sacco's editing, whenever he  
22 accomplished that. It is relevant to his intent. He's  
23 saying his intent of what he intends or what he is doing with  
24 this camera. He is videotaping in this particular instance a  
25 girl, albeit with her clothes on, but quizzing her as to why

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1 she's there to engage in these sexual acts.

2 THE COURT: Hold on, Mr. Lovric. You want to  
3 bring the jury back in. I want to let them go to lunch and  
4 we can continue this discussion.

5 (Jury present)

6 THE COURT: All right, ladies and gentlemen.  
7 What's happened while you went back in the jury room is that  
8 we have been having a discussion regarding the admissibility  
9 of certain government's exhibits that were offered before we  
10 asked you to step aside for a few minutes. That discussion  
11 is not over so we thought it would be well to send you to  
12 lunch. Hopefully while you guys are gone we can finish up  
13 with that discussion and the Court will rule on the  
14 admissibility, and when you come back at 1:30, you'll either  
15 see the exhibits or you won't, depending on the Court's  
16 ruling. So you're excused now until 1:30.

17 (Jury excused)

18 THE COURT: The last one you were addressing  
19 now.

20 MR. LOVRIC: Yes, Judge.

21 THE COURT: Go ahead.

22 MR. LOVRIC: Last excerpt of several minutes  
23 is directly related again to Mr. Sacco's intent in purchasing  
24 this camera. In the last excerpt Mr. Sacco is videotaping  
25 himself at his office cubicle and he gets a phone call on his

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1 cellphone and he answers it and he is talking to the other  
2 person. We cannot hear the other person but we hear Mr.  
3 Sacco saying to that other person that he had put an ad in  
4 the paper looking for girls, that he was looking to create --  
5 and summarizing what the gist of the conversation is, he's  
6 looking --

7 THE DEFENDANT: Women, Mr. Lovric, women.

8 MR. LOVRIC: He's looking to pay girls 150 --

9 THE DEFENDANT: Women, Mr. Lovric.

10 MR. LOVRIC: Judge, I would ask the defendant  
11 not address me directly. If he wants to say something to his  
12 counsel.

13 THE COURT: Mr. Sacco, talk to your attorney,  
14 not in open court.

15 THE DEFENDANT: Sorry, your Honor.

16 THE COURT: That's okay.

17 MR. LOVRIC: He is talking to this other  
18 person about having girls engage in sex for \$150 per hour and  
19 he is looking to videotape, create a videotape of those  
20 actions. He then says to the person to e-mail him pictures  
21 of the person who he's talking to and also says, but send  
22 some of the girls, e-mail some of the girls. It directly  
23 goes to the heart of what we're trying to prove here which is  
24 that he bought this camera, and the camera that he bought, he  
25 intended to use and in fact was talking to -- about using it

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1 to take pictures of sex acts with girls. And that's at the  
2 heart of this case of what we're trying to prove. I don't  
3 see how the defense can argue that it's impermissibly  
4 prejudicial. It's probative, but to say that it's  
5 impermissibly prejudicial, I don't see it, Judge.

6 THE COURT: Well, unfortunately I'm going to  
7 have to look at these excerpts because there's some variables  
8 in here that the Court thinks might push it one way or  
9 another in its determination of admissibility. I don't  
10 really think this is 413, 414 material. I think this  
11 material in question may bear on intent, purpose, plan,  
12 motive, those kinds of things, but it's not 404(b). It's not  
13 413, it's not 414, I don't believe. It certainly isn't 415  
14 evidence. So how do I get to see these things?

15 MR. LOVRIC: Judge, I can give you my laptop  
16 and you can take it in chambers and watch, or if you want to  
17 watch it here.

18 (Discussion held off the record)

19 THE COURT: Court stands adjourned. 1:30.

20 (Lunch break taken)

21 THE COURT: Defense counsel is welcome to come  
22 back during the plugging in ceremony.

23 All right. The Court has reviewed each of the  
24 video clips offered as Government 69 through and including  
25 72, and the Court once again iterates, I guess reiterates

1 that the Court doesn't believe any of that material falls  
2 within the rules of 413 or 414 but the Court does believe  
3 that the information presented could be taken by the jury as  
4 probative information of the charges in the indictment that  
5 relate to production of pornographic -- child pornographic  
6 material, and of course that ties in with the video camera  
7 and what was shown thereon.

8 As to the dates when those photos were taken,  
9 I think looking at the video clips, one can discern in  
10 looking at the defendant in court that they certainly were  
11 taken at or about the same stage in his life and at a time  
12 frame, at least in one of them, when he was employed at the  
13 Glenwood Furniture position.

14 With respect to -- I don't know what the  
15 numbers are here -- but the first one was labeled 2005, so  
16 that tells you I guess maybe some of the time frames, but it  
17 was the group of gentlemen in a room where at the end of the  
18 clip it looked like maybe they didn't know that the  
19 video/audio camera was on, but the first part of that tape,  
20 the Court believes the prejudicial effect outweighs the  
21 probative value. That's the part up until where the  
22 defendant begins discussing as to why he bought the video  
23 camera. Now, it's probative, there's no doubt about it, but  
24 the Court just feels it's unduly prejudicial and will not  
25 admit the part that comes before the time frame three

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1 minutes, five seconds, but after that the Court will permit  
2 that.

3 The second tape entitled Bike Ride, the Court  
4 thinks that that can be edited just by using the computer to  
5 show the portion of the ride where the camera focuses on the  
6 females, but we don't need the part about being in the bank  
7 and anything else.

8 The last two should be admitted in their  
9 entirety. The Court finds that the prejudicial effect does  
10 not outweigh the probative value and is talking about -- I'm  
11 talking about impermissible prejudicial effect.

12 So, that's my ruling. The Court believes it's  
13 relevant and should be admitted, and the jury will have to  
14 make what they think is appropriate of it.

15 Bring the jury in, please.

16 Can you do what I directed?

17 MR. LOVRIC: Can I do that now as to the first  
18 exhibit before they come in? That's the one where they're in  
19 the studio.

20 THE COURT: Go ahead.

21 MR. LOVRIC: Judge, the first one, I have it  
22 cued at three minutes and six seconds.

23 THE COURT: That's fine.

24 (Jury present)

25 THE COURT: Okay. Mr. Lovric.

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1 BY MR. LOVRIC:

2 Q Agent Lyons, before the break I was just asking you  
3 a couple of questions regarding Exhibit 69. And you  
4 indicated in Exhibit 69 there are a number of people talking.  
5 And one of those people is whom?

6 A Mr. Sacco.

7 Q Okay.

8 MR. LOVRIC: I'm now going to play the  
9 appropriate portion of Exhibit 69, Judge.

10 THE COURT: Okay.

11 (Playing Exhibit 69)

12 THE COURT: Let's see now. Did you play 69?

13 MR. LOVRIC: Yes, Judge.

14 THE COURT: Okay. Why don't you identify them  
15 as you play them by number, if you would.

16 So 69 has been played for the jury.

17 MR. LOVRIC: Yes, Judge. That was Exhibit 69.

18 BY MR. LOVRIC:

19 Q Agent Lyons, Exhibit Number 70 that shows Mr. Sacco  
20 on a bike ride, do you recall viewing a video where that was  
21 portrayed on the actual videotape that you watched?

22 A Yes, sir.

23 Q And Exhibit 70, the excerpt, is that a copy and a  
24 snippet of a small portion of the 8-millimeter video that you  
25 viewed?

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1           A     Yes, it is.

2                   MR. LOVRIC:  At this point, Judge, I'd just  
3 like to cue up Exhibit 70 as discussed earlier.

4                   THE COURT:  Yes.

5                   MR. LOVRIC:  I think I have it here, Judge.

6                   THE COURT:  Okay.

7                   (Playing Exhibit 70)

8 BY MR. LOVRIC:

9           Q     Earlier I asked you if you looked at Exhibit  
10 excerpt -- Government Exhibit Number 71 prior to coming here  
11 today.

12           A     Yes, sir.

13           Q     And is Exhibit Number 71 an excerpt, an actual  
14 snippet of a videotape that you watched from one of those  
15 8-millimeter videos?

16           A     Yes, it is.

17                   MR. LOVRIC:  At this time, Judge, I would play  
18 in its entirety the snippet of excerpt labeled as  
19 Government's Exhibit Number 71.

20                   THE COURT:  Okay.

21                   (Playing Government Exhibit 71)

22           Q     Agent Lyons, in that last video excerpt, Exhibit  
23 71, the video that we just saw has Mr. Sacco reciting a  
24 foreign language and then it cuts into some type of  
25 videotaping of a young lady as observed and then it cuts back

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1 to Mr. Sacco reading this foreign language. Is that the way  
2 you found the actual 8-millimeter video that you viewed, the  
3 original?

4 A Yes, I did.

5 Q So that's the way it was spliced or cut as you  
6 found it?

7 A Yes, sir.

8 Q Agent Lyons, Government's Exhibit 72, is that also  
9 an excerpt video of a longer videotape that you viewed in one  
10 of those 8-millimeter videos?

11 A Yes, it is.

12 MR. LOVRIC: At this time, Judge, I'll play  
13 Government Exhibit Number 72, the excerpt, in its entirety.

14 (Playing Government's Exhibit 72)

15 Q Agent Lyons, those four excerpts that we heard and  
16 viewed, were from those 8-millimeter videos that you  
17 discussed?

18 A Yes, sir.

19 Q And those were found again where?

20 A I received those from Mr. Sorvino in New Jersey.

21 Q Now, Agent Lyons, did you participate in the  
22 execution of a search warrant at 45 Fair Street in Norwich,  
23 New York?

24 A Yes, I did.

25 Q Approximately when was that search warrant

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1 conducted?

2 A March 24, 2008.

3 Q And what areas of those premises were searched?

4 A The downstairs apartment, the upstairs apartment,  
5 the basement and the rear garages and shed.

6 Q And were you present during the entire search?

7 A Yes, I was.

8 Q I'd like to first show you Government Exhibits 49  
9 through 55, 49 through 55 and --

10 MR. LOVRIC: Judge, just for the record, 50  
11 and 51 are already in evidence. They came in evidence  
12 through Mr. Clesson Lockwood, but I'm going to show the agent  
13 49 through 55.

14 THE COURT: Any objections?

15 MISS PEEBLES: No, your Honor.

16 MR. FISCHER: No objection, Judge.

17 THE COURT: All right. We'll receive  
18 Government's 49, 52 through and including 55 in evidence.

19 Q Agent Lyons, I'd like to put on the screen the  
20 photographs just received in evidence and have you tell us a  
21 little bit about what they show. Exhibit 49 I'm putting on  
22 the screen.

23 Exhibit 49 that's on the screen now, that's a  
24 picture of what?

25 A That's a photograph that was taken by Special Agent

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1 Kevin Talley on the day of the search of 45 Fair Street, the  
2 front of 45 Fair Street in Norwich.

3 Q Okay. Does that picture show the premises as it  
4 appeared on March 24 when the search warrant was conducted?

5 A Yes, sir.

6 Q Now, I'd like to talk about a couple of things that  
7 we see in this photograph. First, I'm going to point -- see  
8 where the arrow is right now?

9 A Yes.

10 Q What is that arrow pointing to?

11 A That's pointing to the door that leads to one of  
12 the entrances to the upstairs apartment.

13 Q Okay. How many entrances and thereby exits are  
14 there to the upstairs apartment?

15 A Two.

16 Q So this is one of the two?

17 A Yes, sir.

18 Q Agent Lyons, what I'd like to do, just so we have  
19 this memorialized on the actual photo itself, I'm going to  
20 put a U for upstairs and a number 1 for the first  
21 exit/entrance that we talked about. You can see that mark  
22 there, U1?

23 A Yes.

24 Q I'm now going to put on the screen Exhibit 50  
25 that's in evidence, and can you just tell us briefly what

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1 that is?

2 A It's also a photograph of 45 Fair Street, front of  
3 the residence, front left side taken by Agent Talley.

4 Q And I'm going to put a green arrow on a place on  
5 the photo. Do you see that arrow?

6 A Yes, I do.

7 Q What is that green arrow pointing to that I just  
8 put in there right now?

9 A It's an entrance to the downstairs apartment.

10 Q Now the downstairs apartment at 45 Fair Street, in  
11 total how many entrances and exits are there leading to that  
12 apartment?

13 A Three.

14 Q And is where I put the arrow, is that one of the  
15 three entrances and exits to that apartment?

16 A Yes, it is.

17 Q Now, I'm going to write on the actual photo a D for  
18 downstairs and a 1. Do you see that?

19 A Yes, I do.

20 Q Is that correct that's an entrance/exit to the  
21 downstairs apartment?

22 A Yes, sir.

23 Q I'm going to next put on the screen Exhibit 51 in  
24 evidence. And generally what does Exhibit 51 show?

25 A It's a photograph of the rear garages and shed at

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1 45 Fair Street also taken by Agent Talley.

2 Q Now, during the course of the search at 45 Fair  
3 Street did you and other investigators also search the  
4 garages and the shed that's located back there?

5 A Yes, we did.

6 Q Next I'm going to put on the screen Government's  
7 Exhibit 52 in evidence. What is that a picture of?

8 A It's a picture of a Bartles & Jaymes wine cooler  
9 that was located in the kitchen in the first floor apartment  
10 at 45 Fair Street.

11 Q And is that the way you found it when you searched  
12 the apartment?

13 A Yes, sir.

14 Q Next I'm going to put on the screen Government's  
15 Exhibit 53 in evidence. What is that a photograph of?

16 A It's a prescription bottle for Linda O'Connor that  
17 was located in a garbage bag in the basement of the 45 Fair  
18 Street residence.

19 Q Was the container -- did it have anything in it or  
20 was it empty when you found it?

21 A It was empty.

22 Q Can you read who its prescribed to on the actual  
23 bottle?

24 A Linda O'Connor, 45 Fair Street, Apartment 1,  
25 Norwich, New York 13815.

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1           Q     Can you read in the bottom left portion of the  
2 bottle what the substance is that was alleged was inside that  
3 bottle.

4           A     Vicodin.

5           Q     Putting on the screen Exhibit number 54, is that a  
6 picture of the same bottle?

7           A     Yes, sir.

8           Q     Turned slightly more to the left I take it?

9           A     Yes.

10          Q     Does that also a little bit more clearly show the  
11 Vicodin name at the bottom, towards the bottom left of the  
12 bottle?

13          A     Yes, sir.

14          Q     Now, the Vicodin bottle, where in the premises was  
15 that found or recovered?

16          A     It was in the basement, in a plastic garbage bag.

17          Q     On the screen is Exhibit Number 55. What is that?

18          A     It's a cowboy hat that was also located in the  
19 basement on the floor of 45 Fair Street.

20          Q     And Agent Lyons, I'm going to show you the cowboy  
21 hat, in addition to photographing -- let me withdraw that.  
22 The way it was photographed, is that the way you found it?

23          A     Yes, sir.

24          Q     Did you actually also retrieve that cowboy hat?

25          A     Yes, we did.

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1           Q     I'd like to just show you the exhibit. I'm not  
2 going to bring it up but it's exhibit marked for  
3 identification 63.

4                   MR. FISCHER: I have no objection.

5           Q     Is that the cowboy hat that you found?

6           A     Yes, it is.

7                   MR. LOVRIC: I would offer Government's  
8 Exhibit 63, Judge.

9                   MISS PEEBLES: No objection.

10                  MR. FISCHER: No objection.

11                  THE COURT: Receive Government's 63 in  
12 evidence.

13           Q     I'd next like to show you, Agent Lyons, what I  
14 marked as Government Exhibit 98 through 102 inclusive.

15                  MR. LOVRIC: If I can just show it to counsel.

16                  THE COURT: Okay.

17                  MR. FISCHER: May I have just a moment, your  
18 Honor?

19                  THE COURT: Sure.

20                  Any objections?

21                  MISS PEEBLES: No, your Honor.

22                  MR. FISCHER: I'm not sure what they're  
23 offered for, your Honor. They're cumulative. To some of  
24 those I suppose I have some objection --

25                  THE COURT: I'm going to have to look at them

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1 if you have an objection on 403 grounds.

2 The only ones I've seen before, Mr. Fischer,  
3 is 98, which I think is already in evidence from a different  
4 view.

5 Mr. Lovric, did you want to come up here with  
6 the stenographer and we'll have counsel up here so I can hear  
7 arguments on which exhibits.

8 (At the Bench)

9 MR. FISCHER: I can --

10 MR. LOVRIC: Ninety-eight, it's not the one.  
11 It's the door to the left of D1, which is a little bit more  
12 clearly seen in this picture.

13 THE COURT: Well, you could see it but you  
14 couldn't see it clearly.

15 MR. LOVRIC: You couldn't see it from the  
16 front; you can just see the railings.

17 THE COURT: Ninety-nine is the rear.

18 MR. LOVRIC: That's the rear.

19 THE COURT: And 100, that's another door.  
20 Different door.

21 MR. LOVRIC: Correct. That's the far left  
22 door on the back. This is a close-up of the rear showing of  
23 the two doorways from the back and 100 is a close-up of the  
24 door to the far left back, which you can only see the  
25 railings. You can't see the actual door. So that's a

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1 close-up of it.

2 MR. FISCHER: I just wanted to say, Judge, it  
3 appears to me these were taken sometime after Mr. Sacco was  
4 unavailable to work on the house. They show the house, they  
5 show portions of the house that are particularly found in  
6 disrepair, and presumably there's a dual purpose, one might  
7 speculate to show that Mr. Sacco did not do a good job or  
8 didn't take the time to take care of the place.

9 THE COURT: That's not an issue in the case.

10 MR. FISCHER: Dual purpose. Oh, I think a  
11 dominant purpose for coming to Norwich is relevant to the --  
12 to the Mann Act violation, I think it's the seventh count in  
13 the indictment, the purpose for coming across state lines,  
14 one purpose being legitimate and the other purpose being  
15 illegal. If the jury finds that the dominant purpose in  
16 coming to Norwich was the legal purpose, then there's no  
17 violation of the Mann Act.

18 THE COURT: Is that right?

19 MR. FISCHER: Yeah.

20 THE COURT: I'll have to take a look at that.

21 MR. FISCHER: I believe that's correct, Judge.  
22 There's a case, a Second Circuit decision, I just haven't put  
23 it in writing, US v. Sirois, that sets that out.

24 THE COURT: So it's okay if you come across  
25 state lines to have illegal sex, as long as your dominant

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1 purpose is to fix your house.

2 MR. FISCHER: That's my reading of Sirois,  
3 Judge.

4 THE COURT: That's interesting.

5 MR. FISCHER: Under the Mann Act count, that's  
6 my reading what the courts have said.

7 THE COURT: Okay.

8 MR. FISCHER: I'll --

9 THE COURT: I'll read it.

10 MR. FISCHER: This was taken a year after he  
11 was incarcerated. It is prejudicial in that respect. That's  
12 the reason I stated the objection.

13 THE COURT: Are you going to ask about when  
14 these pictures were taken? Mr. Fischer can ask on cross.

15 MR. LOVRIC: Yeah. The agent said they were  
16 taken on March 24, 2008.

17 THE COURT: That's right, for Special Agent  
18 Talley.

19 MR. LOVRIC: I'm not offering them to show any  
20 disrepair. Actually, I think the house is in pretty good  
21 shape. The reason is to clearly show the entrances and exits  
22 to the house because that is relevant to testimony the minor  
23 is going to provide, so these pictures are showing all the  
24 exits and entrances to the residences.

25 Just as a matter of record, I disagree with

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1 the reading of the Mann Act.

2 THE COURT: We'll get into that later.

3 MR. LOVRIC: The case law is just the  
4 opposite, as long as it's one of the purposes of traveling,  
5 but I'm not offering to show -- I'm not quite sure I follow  
6 the argument. But I'm not showing these or asking to  
7 introduce them to show Mr. Sacco was a poor handyman or  
8 anything like that.

9 THE COURT: The Court's going to receive these  
10 exhibits subject to connection because they have to be  
11 connected based on the testimony of someone who will show us  
12 why it's relevant to something, okay?

13 MR. FISCHER: Thank you.

14 (In Open Court)

15 MR. LOVRIC: May I, Judge?

16 THE COURT: Yes.

17 BY MR. LOVRIC:

18 Q Agent Lyons, I'm going to put on the screen  
19 Government Exhibit 98 in evidence, and I'd like to just --  
20 and while I have 98 there, let me once again over that photo  
21 put briefly Exhibit 50, and then I'd like to ask you a couple  
22 of questions. Exhibit 50 which we saw earlier, I put a D1  
23 right here on this door. Do you recall that?

24 A Yes, sir.

25 Q Okay. Now, you indicated that's one of the

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1 entrances/exits to the downstairs, correct?

2 A Yes, sir.

3 Q Okay. I'm going to point now to the left of D1.

4 There's a banister and to the -- this area. What is located  
5 there?

6 A That's another doorway into the downstairs  
7 residence.

8 Q Okay. And now I'd like to lift up Exhibit 50 and  
9 showing Exhibit 98, what is right here in 98 in the center  
10 we're looking at?

11 A It's an entrance way to the downstairs residence.

12 Q Okay. Is that -- Putting on the screen again  
13 number 50, is that the door that's in this banister to the  
14 left of D1, the next door over?

15 A Yes, it is.

16 Q So, what I'd like to do now is on Exhibit 98 I'm  
17 going to put a D2 for Downstairs 2. Is that correct, that's  
18 the second doorway leading to the exit/entrance to the  
19 downstairs?

20 A Yes.

21 Q Next I'm going to put on the screen Exhibit Number  
22 99 in evidence. What is that a picture of?

23 A That's a photo of the rear of 45 Fair Street as  
24 it's taken toward the street, towards Fair Street.

25 Q Okay. And if I could point to a couple of places

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1 on that picture. On the right-hand side of this picture to  
2 the right of the house, the corner of the house, we see a  
3 banister near that green arrow that I just placed. Do you  
4 see that?

5 A Yes.

6 Q What is located there by that banister?

7 A It's a doorway to the upstairs apartment.

8 Q Okay. Now, earlier I had shown you Exhibit 49,  
9 which I'm going to put on the screen briefly. And we put up  
10 U1 on this door that's closest in Exhibit 49 to the street.  
11 Do you recall that?

12 A Yes.

13 Q So, it's signifying upstairs exit/entrance number  
14 1?

15 A Yes, sir.

16 Q This banister on Exhibit Number 99 that I'm  
17 pointing to now, that is a second entrance/exit to the  
18 upstairs?

19 A Yes.

20 Q If it's okay, I'm going to put a U2 right there.  
21 It's a little dark, but can you see that U2 --

22 A Yes.

23 Q -- where the green arrow is? Now, to the left on  
24 Exhibit 99, on the left-hand side of the house from the rear  
25 where I'm pointing to now, do you see that, where the green

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1 arrow is?

2 A Yes.

3 Q What is located there?

4 A That's the third entrance to the downstairs  
5 apartment.

6 Q And if it's okay, I'm going to put a D3 for  
7 downstairs, and that would be the third entrance/exit that  
8 you identified so far?

9 A Yes.

10 Q Do you see that D3 --

11 A Yes.

12 Q -- right before the stairwell? Now I'm going to  
13 put on the screen Government Exhibit Number 100. Do you see  
14 that exhibit?

15 A Yes, I do.

16 Q What is that a picture of in Exhibit 100?

17 A The door to the left in 100 with the stairs and  
18 banisters, that goes to the upstairs apartment. The door on  
19 the right which is open goes to the basement.

20 Q Okay. I'll temporarily put back on the screen  
21 Exhibit Number 99 in evidence, and I had placed a U2 near  
22 this banister right off the corner on the right-hand side of  
23 the house in the back. Do you see that?

24 A Yes.

25 Q And then what does this banister lead up to?

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1           A     The doorway to the upstairs apartment.

2           Q     Is that the doorway pictured in 100 on the screen?

3           A     Yes.

4           Q     I'll put a U2 in the center of that door to  
5 represent that second entrance/exit. Would that be correct?

6           A     Yes.

7           Q     Then putting on the screen Exhibit Number 101, what  
8 does that close-up show?

9           A     The photograph of the rear of 45 Fair Street.

10          Q     Again, this banister on the right-hand side of the  
11 house, is that the banister that leads to the stairs going to  
12 the upstairs?

13          A     Yes.

14          Q     Is that what we labeled in the other photograph,  
15 U2?

16          A     Yes.

17          Q     I'll just put a U2 there.

18                 Then the banister on the left-hand side, off the  
19 left-hand corner of that house on this Exhibit 101, again,  
20 what does that banister lead to?

21          A     It's an entrance to the downstairs apartment.

22          Q     Is that what we've labeled in the previous exhibit,  
23 that being Exhibit Number 99, D as in David 3, Downstairs 3?

24          A     Yes.

25          Q     I'll put a D3 there as well.

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1           Finally, placing on the screen Exhibit Number 102.  
2   What is that a photograph of?

3           A     That's a close-up of what you labeled D3 entrance  
4   to the downstairs apartment.

5           Q     So that's the third entrance/exit to the  
6   downstairs?

7           A     Yes.

8           Q     I'll put a D3 on this photo door as well.

9                     Now, Agent Lyons, when were you there to conduct  
10   the search warrant, these photographs that we were looking at  
11   that we've just gone through, were these actually photos  
12   taken on that date when you were there to do the search  
13   warrant?

14          A     Yes, sir.

15          Q     And once inside the residence, were you able to  
16   walk through the residence as you conducted your search?

17          A     Yes.

18          Q     And as -- with respect to the upstairs, were you  
19   able to determine that the U1 and the U2 stairwell  
20   exits/entrances did connect up to the same one apartment in  
21   the upstairs?

22          A     Yes.

23          Q     And then while in the downstairs apartment and  
24   searching through it, were you able to identify those three  
25   entrances/exits from the inside, D1, D2 and D3?

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1 A Yes.

2 Q So those were in fact ways to get in and out of  
3 that upstairs apartment and downstairs apartment?

4 A Yes.

5 Q Agent Lyons, in addition to the photographs and the  
6 cowboy hat that we saw, did you also recover a few other  
7 items during the course of that search warrant?

8 A Yes.

9 Q At this point I'd like to show you Exhibit 58, 59,  
10 and 62.

11 MR. LOVRIC: If I can just show it to counsel  
12 first.

13 THE COURT: No objections?

14 MR. FISCHER: Yes, Judge, I have an objection.  
15 With respect to the one receipt, I can't read what the  
16 purchase items are. With respect to -- the lined paper  
17 contains some writings. I don't know who created those or  
18 any foundational evidence.

19 THE COURT: All right. Let's go to side-bar.

20 (At the Bench)

21 THE COURT: This is -- Exhibit 62 is white  
22 paper with lines on it headed by the name Shannon O'Connor.  
23 What did you want to say with respect to that exhibit, if  
24 anything?

25 MR. FISCHER: First, I don't know when it was

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1 allegedly created. Two, I don't know who created it. Third,  
2 I don't know what it's offered for, what it's probative of.  
3 And given the nature of what's stated on it, it can create  
4 some prejudices that I think are the bad kind of prejudice in  
5 this case.

6 MR. LOVRIC: Judge, I believe this was created  
7 by Shannon O'Connor while she lived at 45 Fair Street, which  
8 was between August of '06 and February 26 of '07. I guess --

9 MISS PEEBLES: You can offer it through her.

10 THE COURT: I'm sorry?

11 MR. LOVRIC: I have to at least have this  
12 agent talk about the fact that he recovered this. But to be  
13 perfectly honest, Judge, I don't know why the defense is  
14 arguing to keep this out because it talks about Shannon  
15 committing suicide, which is everything they opened on, I  
16 presume we're going to question everyone on. The victim is  
17 going to testify. I'll have her also state when she drafted  
18 this or wrote this, but it has to do with finding something  
19 indicative of her state of mind while she lived at that  
20 residence, which I thought everybody agreed they were going  
21 to bring out anyway. So -- but that's what I'm offering it  
22 for.

23 THE COURT: Well, 62 is received subject to  
24 connection. I want to know -- if in fact it was created  
25 during that time, it has more probative value. But there's

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1 no indication when that was created. It may have been  
2 created before that time. We're going to hear that when she  
3 testifies, I assume.

4 And Exhibit 58, which is a Wal-Mart receipt,  
5 what's the problem with that?

6 MR. FISCHER: No objection to that one.

7 THE COURT: Okay. K-Mart receipt.

8 MR. FISCHER: I can't tell what it's for.

9 THE COURT: Fifty-nine.

10 MR. FISCHER: What it's for.

11 MR. LOVRIC: Skateboard.

12 THE COURT: Skateboard.

13 MR. LOVRIC: But the relevance is not what  
14 it's for. It's the timing. These are dated purchases.

15 THE COURT: In Binghamton, New York.

16 MR. LOVRIC: During the time that Linda  
17 O'Connor and Shannon were at the Best Western between  
18 December 1 and December 3 of 2006. This exhibit is dated  
19 December 3, 12:51 PM, that being Exhibit 59; and Exhibit 58  
20 is dated 12/2/06 at 17:14. And Shannon will also testify  
21 they went shopping at several places, including K-Mart and a  
22 Wal-Mart and some --

23 MR. FISCHER: I'll withdraw my objections to  
24 the receipts then.

25 THE COURT: Sure. These two receipts, one

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1 from K-Mart, Wal-Mart, they were recovered by the witness on  
2 the stand during the search warrant at 45 Fair Street.

3 MR. LOVRIC: Correct.

4 THE COURT: The Court will receive those  
5 exhibits.

6 (In Open Court)

7 MR. LOVRIC: Judge, I'd like to offer Exhibit  
8 Number 59, 58 and 62 and allow the witness to testify where  
9 they were recovered from.

10 THE COURT: The Court will receive  
11 Government's 58 and 59 and Government's 62 subject to  
12 connection.

13 BY MR. LOVRIC:

14 Q Let me do it this way, Agent Lyons. Agent Lyons,  
15 I'm going to put on the camera -- monitor Exhibit Number 58.  
16 Can you see that exhibit?

17 A Yes, sir.

18 Q During the course of that search warrant, where  
19 approximately was this Exhibit Number 58 found?

20 A It was found in the rear garage, the rear garage  
21 nearest the residence, 45 Fair Street, in the garage bay that  
22 was near the house as well.

23 Q And on this receipt -- and I'll put an arrow. Does  
24 it indicate that -- the date the receipt was issued by  
25 purportedly Wal-Mart?

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1 A Yes, sir. December 2, 2006.

2 Q And then putting on the screen Exhibit Number 59.  
3 Is that what appears to be a K-Mart receipt?

4 A Yes, sir.

5 Q And the portion where the arrow is located, does it  
6 indicate when that receipt was issued?

7 A December 3, 2006.

8 Q Can you make out what is purported to have been  
9 purchased on that date on this K-Mart receipt?

10 A Appears to be a 31-inch skateboard.

11 Q And then putting back on the screen Exhibit 55, can  
12 you make out generally some of the items that are being  
13 purchased pursuant to that Wal-Mart receipt?

14 THE COURT: Fifty-five?

15 MR. LOVRIC: I'm sorry, Judge, if I said that.  
16 Fifty-eight. Excuse me.

17 A Yes.

18 Q What are some of the items that are being purchased  
19 pursuant to the receipt?

20 A The items listed as candy tin, oral pain, candy  
21 Trident, candy, panty and tank.

22 Q Okay. The next, Agent Lyons, putting on the  
23 document camera Government Number 62. During the course of  
24 that search warrant where was this 8½ by 11 piece of paper  
25 found?

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1           A     Investigator Berry with the New York State Police  
2 located this in the shed. That would be the building with  
3 the basketball hoop on it in the rear at 45 Fair Street.

4           Q     Putting on the screen Exhibit Number 51 for a  
5 moment. You're referring to a shed. Which one of those  
6 buildings are you referring to?

7           A     The middle building, the one I just touched, where  
8 the arrow indicates right there on the screen.

9           Q     Okay. So this document was found in the shed?

10          A     That's correct.

11          Q     And can you read that where you're sitting, Agent  
12 Lyons?

13          A     I can read parts of it.

14          Q     Okay. Can you go ahead and read what you're able  
15 to make out from the screen?

16          A     "Shannon O'Connor, I want -- I want --" it says "to  
17 die." That's crossed out. "I hate myself" is scribbled out.  
18 Can't really read what, but I see the word "die," but I can't  
19 really make that out on the monitor. Underneath that, "I  
20 hate myself," with a drawing, and also, "I'm going to  
21 myself."

22          Q     Then it has some drawings or doodlings as well?

23          A     Yes.

24          Q     Now, Agent Lyons, in addition to being involved in  
25 the search warrant at 45 Fair Street, were you also present

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1 and participate -- did you also participate in a search  
2 warrant at the storage center when unit number 129 was  
3 searched?

4 A Yes.

5 Q And were you actually there when the items were  
6 recovered and various photographs taken?

7 A Yes.

8 Q I'd like to show you what's previously been marked  
9 as Government's Exhibit Number 34. If I can hold it up.  
10 Have you seen that book before?

11 A Yes, sir.

12 Q Where was this located or found?

13 A That was found inside the chest that had the name  
14 Dean or Dean M. Sacco on it at the storage shed number 129 in  
15 Norwich.

16 Q Now in the chest was there also other materials  
17 found along with that Exhibit Number 34?

18 A Yes, sir.

19 Q Have you had a chance to read the entire contents  
20 of Exhibit Number 34?

21 A Yes, sir.

22 Q And in reading Exhibit 34, does it indicate to you  
23 who the author was of this Exhibit 34?

24 A Through my readings, it's clear to me it was Mr.  
25 Sacco.

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1 Q And in reading Exhibit 34, is there mention in  
2 there by Mr. Sacco of a storage unit somewhere in the New  
3 Jersey area?

4 A Yes, sir.

5 Q And in reading Exhibit 34, does Mr. Sacco in there  
6 also write about obtaining things that he calls illegal  
7 materials?

8 MR. FISCHER: Your Honor, I have objections to  
9 some of the substance of what is contained in that document.  
10 If there is a reference to particular items, we should talk  
11 about the admissibility of each, I suggest.

12 THE COURT: All right. Thirty-four is in  
13 evidence subject to connection.

14 MR. FISCHER: I understand.

15 THE COURT: Should we go to side-bar? You  
16 want to show me what you want?

17 MR. LOVRIC: Sure, Judge. Or there's -- there  
18 are 13 -- 14, excuse me, separate snippets that I would be  
19 offering, so I don't know if the Court wants to give the  
20 jurors a break while we go through that or not. I'm just  
21 making a suggestion.

22 THE COURT: I think the jury should take a  
23 break while we go through that.

24 (Jury excused)

25 MR. LOVRIC: Judge, it probably would be

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1 faster and easier if I had Agent Lyons read the 14 -- they're  
2 three- or four-sentence clips, so the Court knows what they  
3 are. To be very honest, I probably did a poor job of reading  
4 the snippet than Mr. Lyons.

5 THE COURT: Let's have Agent Lyons read them  
6 then.

7 MR. LOVRIC: Judge, I can have Agent Lyons  
8 refer to them. They're all labeled 1 through 14, so when he  
9 reads 1, he'll indicate it's 1, when he reads 2, he'll  
10 indicate it's 2.

11 THE COURT: Wouldn't it be faster if I read  
12 them myself?

13 MR. LOVRIC: If you can read Mr. Sacco's  
14 handwriting.

15 THE COURT: I don't know if I can or not.  
16 I'll try. Thank you.

17 All right. Mr. Fischer, with respect to  
18 number 1, what's your specific objection to that?

19 MR. FISCHER: Well, Judge, part of my  
20 difficulty, I'm not sure which portions -- I don't have the  
21 portions marked.

22 THE COURT: Well, let's have Mr. Lovric come  
23 up here then and we'll -- that's not without question. I  
24 agree with you.

25 (At the Bench)

1 MR. FISCHER: Your Honor, this exhibit is  
2 purported to contain admissions all from Mr. Sacco. I'm not  
3 sure that there's the foundational proof other than it was  
4 found in a locker, I mean, a storage unit 129, as I  
5 understand it, that Mr. Lockwood moved stuff into. It is  
6 written in the first person tense, but without much more  
7 foundation that these are Mr. Sacco's words, when they were  
8 made, I have a foundational objection to that evidence at  
9 this point. That's the gateway of the objection.

10 With respect to the substance of it,  
11 particularly some references to a storage unit, that it  
12 doesn't reference which storage unit, where. At one point it  
13 talks about a street, which is not apparently a street where  
14 the storage unit 129 was located, and in some amorphous terms  
15 talks about some things that were stored in there. And so I  
16 think that it is entirely lacking at this point with  
17 foundation with respect to those claims and those  
18 allegations.

19 With respect to the remainder, again, I object  
20 to that. It is cumulative. It's on top of the substantial  
21 evidence that we already have and the other direct evidence  
22 that I'm sure will come in. This is circumstantial, and its  
23 probative value with respect to the allegations in this  
24 indictment is substantially outweighed by not just prejudice  
25 but a prejudice that this fellow did something in the past

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1 and may have an inclination again here. And I think it is  
2 objectionable under 403 at the very least.

3 MISS PEEBLES: Can I be heard as well, Judge,  
4 about that?

5 THE COURT: Yes.

6 MISS PEEBLES: If that's going to be used to  
7 insinuate that Mr. Sacco somehow was going to destroy things  
8 in the storage shed, I think that would be confusing and  
9 misleading to the jury, particularly because Mr. Lockwood had  
10 already testified that he had the only key and only access to  
11 that. There was no proof offered otherwise. As Mr. Fischer  
12 pointed out, it did pertain to a different storage area, and  
13 it's not clear when that was drafted. Frankly, I think it  
14 would lead to confusion on that particular point. I don't  
15 think it's relevant or probative on top of that, as well as  
16 foundational issues. We've already heard from Mr. Lockwood  
17 with regard to the storage shed.

18 MR. LOVRIC: With regard to foundation, this  
19 was found in Mr. Sacco's chest that said Dean M. Sacco on it.  
20 This diary along with another diary, along with all the  
21 magazines that we saw a picture of. So circumstantially it  
22 links this diary to him.

23 Secondly, I took out -- there were photographs  
24 in here. One of them was his mother and his sister that were  
25 pasted in the book.

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1 Third, the agent has read all of the contents  
2 of this, and when you read the entire diary, it's clear that  
3 the author is Dean Sacco, based on the content. He talks in  
4 here about his job, the furniture place. He talks about his  
5 prior criminal history. So by its contents, even though all  
6 the contents may not be admissible here, by reading this  
7 through, the content, it is clear to the reader, it's being  
8 conveyed that the writer is Dean Sacco.

9 Third, the objection about the storage unit.  
10 These entries in here are not about the storage unit in  
11 Norwich, they're entries about a storage unit in New Jersey,  
12 because in the writing Dean Sacco indicates, as he's writing  
13 about what he just did for lunch or whatever, that he's going  
14 to run over to his storage unit, and it's clear by the  
15 context that he's talking about some storage unit in New  
16 Jersey, which the government has not found or located and  
17 which we certainly have the right to argue that there may  
18 have been materials that were stored there that we didn't  
19 uncover or recover in this case. The specific writings that  
20 we identified, which is the 12, are very specific, pointed  
21 admissions, and they're being offered as admissions of the  
22 defendant. For the defendant to argue that they're  
23 prejudicial is --

24 THE COURT: Well, I don't understand how  
25 references to a storage shed that the government indicates

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1 was not the unit 129 in Norwich but was some storage shed  
2 accessible to him very quickly by Mr. Sacco and then to  
3 speculate what might have been in it and it would have been  
4 of an incriminating nature, I don't see how you can go there.

5 MR. LOVRIC: Defense argued and has in their  
6 opening that the government never found videotapes of Shannon  
7 or photographs of Shannon, that they've never been recovered  
8 in any of the places that we searched or looked. And that's  
9 correct. But the government has the right to counter-argue  
10 and say there are places that we haven't been able to find  
11 but we know exist, such as the New Jersey storage unit,  
12 because he writes about it, and that he had time, from the  
13 time that the controlled calls were made by the victim to  
14 him, to go to that storage unit and either get rid of things  
15 or not go there at all. Simply, those things are still in  
16 some unlocatable storage unit. The defense is going to  
17 argue, and has, we didn't find these things. We should be  
18 able to argue there are some out there we know of that exist.  
19 He wrote about it.

20 MISS PEEBLES: There's a problem with that  
21 argument, actually.

22 MR. LOVRIC: It's argument we should be able  
23 to make.

24 MISS PEEBLES: First of all, you don't have a  
25 time period he's referencing in there. That could have been

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1 five years before he even met Shannon O'Connor. It's a  
2 misleading argument, and I would object.

3 MR. FISCHER: There's no time foundation.

4 MR. LOVRIC: I don't know how the defense can  
5 object to a reasonable argument that we intend to make based  
6 on logic and common sense. The jury will decide if it's  
7 reasonable or unreasonable. For the defense to say -- they  
8 can argue we didn't find it, we can't say anything about we  
9 didn't find it, that defies logic. How can you argue that.

10 MR. FISCHER: The argument I have, I echo what  
11 Miss Peebles said about time frames. It's a foundational  
12 issue. If this was created in 2001, it has no probative  
13 value with respect to the storage unit that is alleged to  
14 have existed sometime after August of 2006. The time -- the  
15 absence of any foundation and time frame is fatal.

16 MR. LOVRIC: The reason the defense would like  
17 to keep this out, because it is so relevant.

18 THE COURT: What about the time frame?

19 MR. LOVRIC: The time frame, Judge, this was  
20 written prior to the events in -- prior to the videotaping at  
21 45 Fair Street. These writings occurred -- Mr. Sacco didn't  
22 write this after he was arrested. We know that because he  
23 didn't have access to these books. He wrote these things  
24 before. It's no different than if the defendant was writing  
25 about a place that he owned, another residence, another

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1 house, and if he wrote in there, this is where I keep all of  
2 my films that I produce of children and we couldn't find it  
3 or identify it, the defense would say it's irrelevant.

4 THE COURT: They're talking about foundation  
5 as to could these writings have been created prior to 2006,  
6 prior to August 1, 2006.

7 MR. LOVRIC: They were, Judge, because they  
8 were created prior to August 2006.

9 THE COURT: You say it doesn't make any  
10 difference because it talks about the storage place.

11 MR. LOVRIC: Right. It doesn't make any  
12 difference. It's a thing he is talking about owning and  
13 having a storage unit where he keeps his belongings,  
14 property. I don't know how that's not relevant given the  
15 fact that the defendants want to argue that we didn't find it  
16 and we have an obligation to find it. Here's this unit. We  
17 can't find it; we don't know where it is.

18 MISS PEEBLES: That's misleading and may not  
19 have been when Shannon O'Connor moved in in 2006. It's  
20 misleading, like everything else.

21 MR. LOVRIC: No, it's not.

22 MISS PEEBLES: Yes, it is.

23 MR. LOVRIC: I don't have it. Here's the  
24 location, go get the records. I'll be happy to get the  
25 records. That's not the argument.

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1 THE COURT: I think it's admissible to show  
2 that there could be other places, but it's only admissible in  
3 response, as I see it, to the arguments made by defendants  
4 that any depictions were not found and therefore they don't  
5 exist, and I think that's one of the defendants' main  
6 thrusts, is there any such videotapes, is there any such  
7 pictures, that's why you should acquit my client. The  
8 government wants to say, we know your client had a place in  
9 New Jersey and could get there rather easily and we couldn't  
10 find it. So I think that for that purpose only it would be  
11 admissible. That's that.

12 (In Open Court)

13 (Jury present)

14 THE COURT: All right, Mr. Lovric.

15 BY MR. LOVRIC:

16 Q Agent Lyons, before we broke, I asked you if you  
17 had a chance to read the entirety of Exhibit Number 34, the  
18 diary found in Mr. Sacco's chest.

19 A Yes, sir.

20 Q Okay. I'm going to hand you Exhibit 34 and I'm  
21 going to ask you, you know, first of all, in going through  
22 that exhibit, did you at my request tab certain portions?

23 A Yes, I did.

24 Q And those are the tabs that we see on Exhibit 34?

25 A Yes, sir.

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1           Q     Okay. So those weren't there before when the item  
2 was first recovered, right?

3           A     That's correct.

4           Q     Okay. If you could look at tab number 1 in Exhibit  
5 34, and could you read that for us.

6           A     Yes, sir. Tab number 1 is on page 49. "Back to  
7 the YMCA where I found a sample photo from years ago of Wendy  
8 and where I chatted again with Earl and soon I was geared up  
9 with both cameras and out the door feeling like a  
10 professional photographer. It all weighed so much on me,  
11 started asking people as soon as I got on the train, first a  
12 guy and his kids and then three young teens who I snapped on  
13 the subway and then on the steps of the United States Post  
14 Office."

15          Q     Next, can you read tab number 2 in that exhibit.

16          A     Yes, sir. Tab 2 is on page 50. "Talked to Louis  
17 and got him to give me two more packs of Polaroid film so I  
18 can go out tomorrow (on Easter) and try to do a professional  
19 job with my camera and make myself \$100. He ended up giving  
20 me two packs, and I was very grateful and appreciative."

21          Q     Then next, can you read tab number 3?

22          A     Yes, sir. Tab 3 is on page 63. "One bad thing did  
23 happen though. I spent so much time on little girl sites, I  
24 missed a lesson in typing class and was so confused and  
25 disappointed at myself. I felt like a fuck-up in my high

1 school days. I had no idea what to do on the computer when I  
2 returned and just sat there wanting to start school all over  
3 but got my patience back and finally got some work done.

4 Scary."

5 Q And then exhibit, is it 4?

6 A Yes. Four is on page 64. "At work I compromise  
7 myself yet once again spending entire day more concerned with  
8 getting some good young girl porno to look at than getting  
9 furniture sales on phone. I do interact with little girls  
10 that Elaine brought to work however, making them laugh and  
11 even running my fingers through little curly haired one's  
12 locks. Very pretty girls."

13 Q Can you next read tab number 5.

14 A Page 5 or tab 5 is page 65. "But there is an  
15 increasing sense that young girl porno on the internet is a  
16 true alive and potentially dangerous vice of mine that I must  
17 bridle and reign in, especially while at work, where job is  
18 priority number 1."

19 Q Next can you read tab 6.

20 A Tab 6 is also page 65. "So essentially, we have a  
21 major occurrence that has taken place, something that finally  
22 has shaken my excellent track record out on the street thus  
23 far and nothing so far has had such an extensive effect on my  
24 personality, work performance and even self-esteem. As the  
25 internet --" the internet is underlined twice -- "and

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1 specifically the searching for young preteen and teenie sex.  
2 This has potentially self-destructive implications if I get  
3 too careless or irresponsible or let my sexual urges mandate  
4 my behavior."

5 Q Can you read tab 7 next.

6 A Yes, sir. Tab 7 is page 66. "Came back and joked  
7 and kicked it with Thai -- T-H-A-I -- Thai guys at first  
8 place and had great talk with guy about how to score young  
9 underaged girls in his country and surrounding countries."

10 Q Agent Lyons, before we go to tab 8, the storage  
11 unit where you recovered that diary, is that also the storage  
12 unit where an envelope with sex type materials from the  
13 Philippines and Thailand was located?

14 A Yes, sir.

15 Q Can you read tab 8 next.

16 A Tab 8 is page 67. "But I did not reach the state  
17 of mind I had targeted for myself. Some extra yoga and  
18 meditation to counteract this new (but old behavior)  
19 impatient and angry Dean that has been surfacing lately as a  
20 direct result of my internet activities and frustrations at  
21 workplace where every day for six days (counting today) I  
22 have frustrated myself trying to find illegal material on the  
23 net."

24 Q The last reading -- I just want to make you  
25 pronounce that -- was illegal as opposed to legal?

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1           A     Illegal, yes, sir.

2           Q     Can you read tab 9 next.

3           A     Tab 9 is page 71. "At work I surfed internet for  
4 Polaroid camera but ended up back on triple X sites surfing  
5 for young girl porn and it happened for tenth workday in a  
6 row. I got myself all bent out of shape, out of character  
7 and impatient with others. And it was all because of letting  
8 myself get frustrated because sex sites I wish to look at  
9 won't stay on screen and advertisement junk I don't want  
10 keeps taking over computer over and over and over again."

11          Q     Can you read the next -- I believe we're up to tab  
12 10.

13          A     Tab 10 is page 78. "I begin phone work, leisurely  
14 surfing internet for mail order brides and looking at 200  
15 Russian women and others before slipping back into Lolita  
16 land, where I stayed for rest of day. Could not stop myself  
17 either but plan to at least only stay on L -- for Lolita --  
18 sites instead of infecting my entire computer with young girl  
19 evidence. So there you have it. Human nature. Internet too  
20 stimulating to ignore."

21          Q     Agent Lyons, in your work of the child exploitation  
22 area, are you familiar with the term Lolita material or  
23 Lolita sites?

24          A     Yes, sir.

25          Q     What is that a reference to, Lolita sites?

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1           A     You frequently find child pornography associated  
2 with those sites.

3           Q     Can you read tab 11 next.

4           A     Yes, sir. 11 is page 81. "Spent evening cutting  
5 up BMW internet photos of girls and taping them up on my wall  
6 and enjoying it. I told Ralph today that I might as well get  
7 into the porno business on some level and get computer and  
8 digital camera, etcetera if I love it so much. And it's  
9 true. Might as well maybe make it a hobby."

10          Q     Can you read tab 12 next.

11          A     Yes, sir. Tab 12 is page 89. "At work I get right  
12 down to business and start off surfing a great Philippino  
13 wife site. Found some awesome VY girls who are gorgeous. I  
14 printed out a photo and sheet of favorites. Went to triple X  
15 sites next and basically surfed them rest of day, although I  
16 did also shop for digital camera and some mail checking."

17          Q     Can you read the next tab, being tab 13.

18          A     Yes, sir. Tab 13 is page 72. "Downstairs I joked  
19 with Louis, looked in Yellow Pages for storage place. Bought  
20 mouthwash for 99 cents at corner place, then at 8:00 took  
21 walk down West Grand (nice street) and found storage place.  
22 Ended up renting a tiny space for \$50 and \$10 security."

23          Q     Can you read next tab 14.

24          A     Yes, sir. Tab 14 is page 73. "At 12 though I was  
25 back out front just in time to see Mike and Don pull up in a

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1 gold van. Out came Don looking heavy and healthy and worn  
2 out but whom I gave a huge hug, and my brother Mike, who  
3 looked good and whom I gave a hug also. Mike had to use  
4 bathroom in Y gym while I talked with Don Jr. Then we were  
5 off to the storage place next, where Don and I mostly talked  
6 and moved my boxes into storage unit."

7 Q Now, Agent Lyons, in connection with those  
8 notations in that diary, did the FBI attempt to locate any  
9 storage areas that Mr. Sacco might have rented in New Jersey?

10 A Yes, sir.

11 Q Were you able or were other agents able to locate  
12 any of his storage unit facility or areas that he had rented  
13 a storage unit?

14 A No, sir.

15 Q Now, Agent Lyons, in the course of this  
16 investigation, did you come to learn that Mr. Sacco had  
17 written an autobiography book?

18 A Yes, I did.

19 Q Did you actually obtain a copy of that  
20 autobiography book?

21 A Yes, sir.

22 Q Did you also from the publisher obtain the contract  
23 agreement that Mr. Sacco entered into in having that book  
24 published?

25 A Yes, sir.

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1           Q     I'd like to show you what's been marked as  
2 Government's Exhibits Number 67 and 68.

3                   MR. FISCHER:   May I take one moment to look at  
4 these?

5                   THE COURT:    Sure.

6                   MR. FISCHER:   Mr. Lovric.   Thank you.

7 BY MR. LOVRIC:

8           Q     Agent Lyons, if I can show you Government's Exhibit  
9 67 and 68.   If you could identify Exhibit 67 and then 68 for  
10 us.   Generally speaking, what is Exhibit 67?

11          A     Sixty-seven is the publication agreement that the  
12 company who Mr. Sacco dealt with for his autobiography had  
13 forwarded to us.

14          Q     And then what is Government's Exhibit Number 68?

15          A     Sixty-eight is the autobiography by Dean Michael  
16 Sacco.

17          Q     And on Exhibit 68, is there a photograph on the  
18 front page of that book?

19          A     Yes, sir.

20          Q     Who's it a photograph of?

21          A     Mr. Sacco.

22          Q     And are there also other photographs depicted  
23 somewhere in the other parts of the book or on the back  
24 cover?

25          A     Yes, sir.

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1 THE COURT: Is there any objection to the  
2 exhibit?

3 MR. FISCHER: No. That question, I didn't  
4 object, but do I have, generally speaking, some objections?  
5 Yes, Judge.

6 THE COURT: You want to put them on the record  
7 now?

8 MR. FISCHER: Yes, please.

9 (At the Bench)

10 THE COURT: You have exhibits, you've got tabs  
11 in the -- in 68, and are you proposing that you read the tabs  
12 to the jury?

13 MR. LOVRIC: Yes, Judge, that is my intention,  
14 to offer and read only the tabs.

15 MR. FISCHER: Judge, I've looked at the  
16 exhibit. They're from, at the very latest, 2000. So their  
17 only purpose can be basically character evidence. 413, 414  
18 type evidence. This is written apparently when he is  
19 incarcerated and so it can't be evidence of a plan or  
20 preparation and is not admissible as to the substance of the  
21 claims in the indictment as I understand it, Judge.

22 THE COURT: What do you think it would be  
23 evidence of, motive or intent?

24 MR. FISCHER: I really believe it's not,  
25 Judge, and plus it's remote in time. This was written ten

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1 years plus ago, parts of it at the very least, because he was  
2 incarcerated from approximately 1992 into the 2000s, until at  
3 least the time this was published. And it was a work in  
4 progress for a long time, I assume, given the length of it.  
5 And so these were probably statements made more than, if any,  
6 more than ten years ago. Their probative value is weak at  
7 best, and as I read the book itself, it says essentially that  
8 it is an enhanced almost fictional work. I think in the  
9 first couple of pages you can find a disclaimer saying it is  
10 not a direct autobiography. There's a chapter in the book  
11 called The Stranger written in the third person, so I  
12 disagree with the contention that it is an autobiography,  
13 period.

14 MR. LOVRIC: The defendant has stated it's an  
15 autobiography. He stated that in the book but he also states  
16 that to Investigator Pandiscia, and it's clear from reading  
17 the book that it's an autobiography. I don't know where the  
18 defense gets the argument that it's some kind of a half  
19 fiction or not. He's always -- defendant has always claimed  
20 it's an autobiography of his life. The portions that we've  
21 outlined are directly related to his intent and his  
22 pedophilia because he writes it and he writes about things  
23 that are in his mind and in his head. I don't know what can  
24 be more relevant than a defendant putting what's in his mind  
25 and what his thoughts are in writing, even if he were to try

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1 to argue somehow it's not true. The fact of the matter, he  
2 claimed it's an autobiography, and it's up to the jury to  
3 decide if it is or isn't. All the evidence points to the  
4 fact that it is his pouring out his mental guts into a book.  
5 I can't think of a more probative thing than the defendant's  
6 own words and admissions and statements about his thoughts,  
7 about attraction to children, about his thoughts about things  
8 that he did and things that he was doing and why he was doing  
9 them. It's his mind on paper.

10 THE COURT: Well, number 1, tab number 1 of  
11 Exhibit 68 contains a number of pages of materials, and I  
12 have to have time to read those over.

13 MR. LOVRIC: I can take a look, Judge.

14 THE COURT: Oh, it's backwards.

15 MR. LOVRIC: It's demarked.

16 THE COURT: Well, I've read the first four  
17 excerpts. While some of them may be probative, I think  
18 there's cumulative material. There's a lot of the same type  
19 of stuff, and it concerns me, and I need to have time to go  
20 through all this material and think about it to decide which  
21 parts are admissible, if any, and which parts are not,  
22 because a lot of this repeats his plan of doing what he does  
23 to young ladies. Once again, I don't think you can just dump  
24 this in wholesale. In fact, I'm not going to permit that.  
25 I'm going through it part by part, decide which part can come

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1 in.

2 MR. LOVRIC: The only parts that we're  
3 offering are the ones that are tabbed.

4 THE COURT: It's clear --

5 MR. LOVRIC: I'm not offering the whole book.

6 THE COURT: I'm going to reserve decision on  
7 this.

8 Now let's talk about 67. What is this?

9 MR. LOVRIC: That's just laying the additional  
10 foundation. That's the contract for the book. It shows that  
11 Mr. Sacco is the one that had it printed and sent it away for  
12 publishing.

13 THE COURT: Is there any dispute about that?

14 MR. FISCHER: No, there's no dispute that 68  
15 is in fact Mr. Sacco on the front of the book and it is his  
16 name as the author in the book.

17 THE COURT: With the same hat.

18 MR. FISCHER: We're not going to contend -- I  
19 wouldn't guess.

20 MR. LOVRIC: Judge, I was offering because I  
21 don't know what the objections are ahead of time. 67 was the  
22 foundation to 68, to his book.

23 MR. FISCHER: It's his book.

24 THE COURT: They say there's no dispute about  
25 it.

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1 Not a problem.

2 MISS PEEBLES: Not a problem.

3 THE COURT: Okay. So we don't need 67. I'll  
4 have to take time to look at this and decide, in light of  
5 evidence I know that's come in and in light of evidence that  
6 I think is coming in, to decide how much, once again if any  
7 of this, should come in.

8 MR. LOVRIC: Okay.

9 THE COURT: It's powerful stuff. It's  
10 disgusting.

11 MR. LOVRIC: Well, I hate to say it, Judge,  
12 the substance of this case is disgusting and very powerful.

13 THE COURT: We all understand that.

14 MR. LOVRIC: Unfortunately, it's not a drug  
15 case or something of that sort.

16 Judge, I'm almost finished with this witness  
17 in terms of what I have to cover. I'm not sure -- I had  
18 maybe one or two other questions. This was my final topic to  
19 cover with him. And then I have the next witness. But I  
20 don't know how you want to proceed as far as this goes.

21 THE COURT: Why don't you withdraw him at this  
22 time. He's the case agent. He's going to be around. He  
23 doesn't have any place to travel. And we'll put your next  
24 witness on and have cross-examination as close to the end of  
25 the day as we think is appropriate. I can look at that stuff

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1 overnight, you can put Agent Lyons back on, and then they can  
2 cross-examine them.

3 MR. FISCHER: Judge, might I also suggest, as  
4 a time-saving measure, that I'm going to ask Mr. Lyons what  
5 did he review in preparation for his testimony.

6 MR. LOVRIC: You have everything that he  
7 reviewed.

8 MR. FISCHER: All right.

9 MR. LOVRIC: I don't know if that helps you.

10 THE COURT: Because otherwise we might be here  
11 a week.

12 MR. FISCHER: That helps.

13 THE COURT: Is that acceptable to you?

14 MR. LOVRIC: Sure, Judge. You want me to put  
15 the next witness on without him being crossed at this time?

16 THE COURT: You probably want to.

17 MR. FISCHER: I have no objection to  
18 postponing his cross and having the next witness come in and  
19 crossing after we get a ruling concerning the evidence.

20 MISS PEEBLES: Who's next?

21 MR. LOVRIC: David Pandiscia.

22 MISS PEEBLES: I have no problem.

23 (Jury present)

24 THE COURT: All right, ladies and gentlemen.  
25 We're going to suspend with Agent Lyons, the remainder of

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1 direct. I'm informed there's very little left to ask on  
2 direct examination and the last document, Government 68,  
3 that's being offered, excerpts from that, the Court has to  
4 examine and take some time to look at before I decide what  
5 part is admissible and what part is not.

6 So, Mr. Lovric has indicated -- defense has no  
7 objection -- that we're going to ask Special Agent Lyons to  
8 step down now, and we have another witness ready to go, and  
9 then there will be cross-examination of Special Agent Lyons  
10 when he takes the stand shortly.

11 MR. LOVRIC: Judge, the next witness we call  
12 is Investigator David Pandiscia --

13 THE COURT: Okay.

14 MR. LOVRIC: -- Connecticut State Police.

15 THE CLERK: Sir, kindly state your name for  
16 the record.

17 THE WITNESS: Detective David Pandiscia,  
18 P-A-N-D-I-S-C-I-A. Pandiscia.

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1 D A V I D P A N D I S C I A, having been called as a  
2 witness, being duly sworn, testified as follows:

3 THE COURT: Okay, Mr. Lovric.

4 DIRECT EXAMINATION

5 BY MR. LOVRIC:

6 Q Detective, for the members of the jury, could you  
7 please tell them your full name and tell them where you work.

8 A My name is Detective David Pandiscia, Connecticut  
9 State Police, major crime detective.

10 Q And Detective Pandiscia, how long have you been  
11 with the Connecticut State Police?

12 A Been with the Connecticut State Police a little bit  
13 over 11 years now.

14 Q And just generally speaking, what kind of work and  
15 what kind of duties do you perform currently as a detective?

16 A As a detective, I investigate mostly major crime  
17 incidents, homicide, kidnappings, sexual assaults, serious  
18 matters.

19 Q And prior to becoming a detective, did you work in  
20 any other capacity with the Connecticut State Police?

21 A Yes, sir. I worked as a, first, when I came on, as  
22 a patrol trooper, and also I was a SRO, which would be school  
23 resource officer, basically full-time police officer works  
24 within the towns and the schools.

25 Q Detective Pandiscia, this afternoon I would like to

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1 talk with you about a person by the name of Dean Sacco. Are  
2 you familiar with a person by that name?

3 A Yes, sir.

4 Q And the person that you know as Dean Sacco, do you  
5 see him in court anywhere today?

6 A Yes, sir.

7 Q Can you just for the record indicate where you see  
8 him.

9 A Right there, sir, in the blue shirt.

10 Q The gentleman who just raised his hand.

11 A Yes, sir.

12 MR. LOVRIC: Just for the record, indicating  
13 defendant Sacco.

14 THE COURT: Record will so reflect.

15 Q Detective, in 2003, approximately, the fall time  
16 frame of 2003, did you happen to be working and have occasion  
17 to work on a case that dealt with a person by the name of  
18 Mallory Monagan?

19 A Yes, sir.

20 Q And at that time was Mallory Monagan a minor, a  
21 teenage girl?

22 A Yes, sir.

23 Q And in addition to Mallory Monagan, did you also  
24 have the opportunity to work in connection with the Monagan  
25 matter and that investigation with two other teenage kids

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1 that were involved in that matter?

2 A Yes, sir.

3 Q Now, in connection with that investigation, in  
4 December of 2003, did you have the opportunity to interview  
5 Mr. Dean Sacco?

6 A Yes, sir.

7 Q And in what state was it that that interview  
8 occurred?

9 A New Jersey, sir.

10 Q And did you actually -- I presume you traveled to  
11 New Jersey to conduct the interview?

12 A Yes, sir. One of my detectives, a partner and  
13 myself traveled there.

14 Q And did Mr. Dean Sacco agree to speak with you?

15 A Yes, sir.

16 Q And did you sit down with Mr. Sacco and then  
17 conduct an interview for at least -- for quite some time,  
18 that lasted quite some time?

19 A Yes, sir.

20 Q Now, during the course of that interview, prior to  
21 interviewing Mr. Sacco, did you advise him of what we heard  
22 here, what we hear called Miranda warnings or Miranda rights?

23 A Yes, sir.

24 Q Did he agree to speak with you without an attorney  
25 being present?

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1 A Yes, sir.

2 Q And how did the conversation start or commence,  
3 what did you speak to him about, what kind of conversations  
4 did you have with him?

5 MR. FISCHER: Judge, I have an objection. 403  
6 objection, cumulative basis. Miss Monagan's already  
7 testified about the events back then. We have all this other  
8 evidence. I have an objection on that basis.

9 THE COURT: I don't know what this witness is  
10 going to say so I have no way of making a 403 ruling. Did  
11 you want to give us a proffer, Mr. Lovric?

12 MR. LOVRIC: Yes, Judge, I can.

13 THE COURT: Okay.

14 (At the Bench)

15 THE COURT: Go ahead.

16 MR. LOVRIC: During the course of the  
17 interview Mr. Sacco made statements to this detective which I  
18 believe are admissions as to his conduct relating to Miss  
19 Monagan. We're offering those as admissions by the  
20 defendant.

21 THE COURT: Well, I don't see how that can be  
22 cumulative. We heard Miss Monagan, what she thinks was done  
23 to her. We haven't heard Mr. Sacco's version of this. I  
24 don't know any evidence of that.

25 MR. FISCHER: I have Mr. Lyons' grand jury

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1 testimony where he recites what this witness said and I read  
2 it, and I do not see in here that Mr. Sacco admitted anything  
3 with respect to Miss Monagan. I offer -- I can pull it out  
4 and offer it as an exhibit if necessary.

5 THE COURT: You've got to cross-examine him  
6 with it.

7 MR. LOVRIC: Let me make sure I'm clear,  
8 Judge. We may dispute whether or not it's an admission. Mr.  
9 Sacco doesn't come out and say, yes, I did everything she  
10 says I did, but I submit what he does say to this  
11 investigator and the way he says it and when taken in the  
12 whole context, I believe it's an admission on defendant  
13 Sacco's part. That may or may not be a correct reading, but  
14 I believe it is, and that's what I'm offering it as. I'm not  
15 offering it as anything else, but they're his words and his  
16 statements about what did or didn't happen while he was  
17 tickling Miss Monagan.

18 MR. FISCHER: It's not an admission. It is  
19 413 and 414 evidence is what it is.

20 THE COURT: Well, it's not 415 evidence. This  
21 isn't a civil suit. It could be 413 and 414 evidence, yes.

22 MR. FISCHER: Yes, I am sorry.

23 THE COURT: It could be an admission or it  
24 could be both. We don't know. If you've got things from the  
25 grand jury minutes that you can cross this guy with, I think

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1 that's the way we'll handle it.

2 MR. FISCHER: Okay.

3 (In Open Court)

4 BY MR. LOVRIC:

5 Q Detective, when you started your interview of Mr.  
6 Sacco, what were just some of the first things you talked  
7 about to kind of get the interview process going?

8 A We just had a casual conversation about where he  
9 was from, his father being a highly decorated Army officer,  
10 Army ranger living in various bases. Just very casual  
11 conversation.

12 Q And then did you have any discussions with Mr.  
13 Sacco about a book that he had written or authored?

14 A Yes, sir.

15 Q Okay. And then at some point did you speak with  
16 Mr. Sacco and was there discussions about the substance of  
17 what you were there to talk to him about, being the  
18 allegations regarding Miss Mallory Monagan?

19 A Yes, sir.

20 Q And did Mr. Sacco, when he began to talk to you  
21 about those events, did he talk to you about his version of  
22 what may or may not have occurred in connection with Miss  
23 Mallory Monagan?

24 A Yes, sir.

25 Q Did he describe or did he start to describe to you

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1 what it was that he believed occurred during this event with  
2 Miss Monagan?

3 A Yes, sir.

4 Q Can you describe a little bit about what he said  
5 occurred or did not occur with respect to Miss Monagan?

6 A Yes, sir. He -- on his version of how the whole  
7 thing went down and how he felt, that sometimes people bigger  
8 than smaller children, they might be afraid of him and stuff  
9 like that, and he also made some statements on that, if I can  
10 refer to my notes.

11 Q If you need to refresh your recollection,  
12 certainly.

13 A Yes. Mr. Sacco said he was aware of the  
14 allegations, that his family was concerned about the outcome,  
15 the family was concerned about the outcome of those  
16 allegations. He said apparently, from what he heard, someone  
17 felt uncomfortable. I could look scary to a little kid, I  
18 might be hard for a child to be comfortable around. I might  
19 be unshaven that day and a kid could be freaked out over it.  
20 And he also stated, I can hug a little bit too hard, I can  
21 play a little bit too hard. I do everything a little too  
22 hard, I guess. Humans have a need for affection.

23 Q And then did Mr. Sacco talk about with respect to,  
24 in hindsight, why at least he thought that the children in  
25 this case might have been a little afraid of him?

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1           A     Yes, sir.

2           Q     What did he point to or say in connection with why  
3 the children that had made these allegations, why they might  
4 have thought there was something wrong going on? What did he  
5 attribute that to?

6           A     He attributed that to -- oh, in hindsight, he would  
7 say he's bigger, bigger guy to them, his breath might stink.  
8 He might -- might not need to be the same -- I'm sorry. My  
9 breath might stink, my needs might not be the same as a  
10 child, they might have been taught in school that if an adult  
11 plays a little too rough, that's not right. And then I asked  
12 Mr. Sacco, was there anything that you were horse playing  
13 with the kids that would make them feel something was going  
14 on? And he replied, yeah, I didn't want to put barriers up  
15 and wanted to be new to me and show that I had changed.

16          Q     Did he talk about his perception of girls, how he  
17 viewed them?

18          A     Yes, he did, sir.

19          Q     What did he describe girls as opposed to boys, how  
20 they were different to him?

21          A     Yes, sir. He described the girls are different  
22 than male relatives. They were different creatures, like  
23 Venus and Mars. Mr. Sacco stated that girls were -- in  
24 particular are fun to be with, and I want to be a kid doing  
25 the things they wanted to do. He also stated -- and he also

1 stated with a question, did I sexually touch, did I go over  
2 the line and do anything in a sexual way? No, I did not.  
3 However, I can say I learned a lot about dealing with kids.

4 Q Did Mr. Sacco at some point then in the interview  
5 go on to expand about what he meant about whether he touched  
6 any of the children inappropriately or not and specifically  
7 as it related to any genitalia being touched?

8 A Yes, sir. I asked Mr. Sacco while tickling the  
9 girls -- oh, I asked Mr. Sacco while tickling the girls he  
10 accidentally touched them in the wrong place. Mr. Sacco  
11 replied, you know, I know where the genitalia is, and to get  
12 a sneaky touch, I know where the line is and I didn't cross  
13 the line. And then he also added, I cannot rule that  
14 possibility out hundred percent.

15 Q Did he then talk about where he was tickling  
16 Mallory at the time that this tickling occurred?

17 A Yes. He said around the rib area at that time.

18 Q Did he say where in the house this occurred?

19 A Up in the bedroom, sir. And Stevie's bedroom.

20 Q Did he indicate or elaborate on whether or not --  
21 in his words whether or not he was in a position to get a  
22 feel, if he wanted to, of the children?

23 A He said, If I tried to get a cheap feel off, I  
24 think I would have been able to admit to it. Then he went on  
25 to say, To tell you the truth, Officer, I do not think any

1 genitalia was compromised. From day one I made a choice not  
2 to be afraid to interact with children. It's been a  
3 wonderful experience. And then he explained that that day  
4 the tickling occurred, it took place about three to five  
5 minutes.

6 Q What did Mr. Sacco say in connection to whether or  
7 not he accidentally touched the genitalia of Mallory or any  
8 of the other children?

9 A He stated, Did I accidentally touch the genitalia?  
10 I'm too smart for that.

11 Q Okay.

12 A Can I say those words too?

13 Q Yes.

14 A Then he said, Did I accidently touch the genitalia?  
15 I'm too smart for that. I know where a pussy is, I know  
16 where an asshole is. However, I can't rule that out. I  
17 don't think any way, shape or form, I compromised a child's  
18 genitalia. I can't admit to that. Sorry.

19 Q And then did Mr. Sacco then deny any inappropriate  
20 touching?

21 A Then he said, honest to God, I pretty much know I  
22 didn't touch her. I asked Mr. Sacco if he tickled her about  
23 three months ago in Stevie's room. Mr. Sacco responded, My  
24 recollection is kind of foggy.

25 Q Did Mr. Sacco go on to describe his view of kids

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1 and what kind of -- in his words what kind of creatures they  
2 are?

3 A Yes, sir. He stated that, If I could have guessed,  
4 I could have smarted and sneaked -- I could have started with  
5 Stevie, then Mallory. I asked Mr. Sacco what he meant about  
6 not being afraid of children? Mr. Sacco replied, I'm not  
7 saying I was afraid. I mean to be afraid not to open up.  
8 Mr. Sacco then stated, Let's face it, kids are beautiful  
9 creatures, not being afraid to get right in with them.

10 Q Did Mr. Sacco during the course of this interview  
11 at all indicate to you at any point in time whether or not he  
12 had any attraction to 8-, 9- and 10-year-old girls?

13 A Yes, sir. He did. He said he was attracted to 8-,  
14 9-, 10- and 11-year-old girls. Mr. Sacco stated that all  
15 girls are attractive.

16 Q Now, in connection with this interview, did you at  
17 some point ask Mr. Sacco to write down on a piece of paper  
18 the substance of your interview with him?

19 A Yes, sir. At the end I gave him a statement paper.  
20 I explained to him to write out as much detail as possible  
21 and to put it in his own words, provided enough statement  
22 paper, as much as he needed.

23 Q Okay. Did he write out on a one-page piece of  
24 paper some of the things you talked to him about?

25 A Yes, sir.

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1 Q After he wrote that out, did you ask him any  
2 questions about what he had written in that document?

3 A Yes, sir. After he was done I reviewed the  
4 statement with him, and after he signed it and then I asked  
5 him, why didn't you put in the statement how you were  
6 attracted to 8- or 9-, 10-year-old girls? Mr. Sacco  
7 replied -- didn't deny it but replied, I don't know how that  
8 would help your investigation.

9 Q Did he ever write that down on that piece of paper?

10 A On being attracted to 8, 9, 10, 11 years old?

11 Q Correct.

12 A No, he did not, sir.

13 Q Okay. In connection with this investigation and  
14 also including the interview of Mr. Sacco, did you at some  
15 point arrest Mr. Sacco and charge him with certain offenses?

16 A Yes, sir.

17 Q And I'm sorry. Go ahead.

18 A I applied for an arrest warrant for that individual  
19 and went through our court system, signed off by my  
20 supervisor, state attorney as well as the Judge.

21 Q And then at some point Mr. Sacco was arrested in  
22 connection with this matter?

23 A Yes, sir.

24 Q And that was in the state of Connecticut?

25 A He was arrested in New Jersey and then he waived

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1 extradition, and then myself and my partner that I was with  
2 on that assignment traveled to New Jersey and picked him up.

3 Q Okay. While you interviewed Mr. Sacco what was his  
4 demeanor while he was talking with you?

5 A Friendly. Friendly. Very open. More than happy  
6 to sit down and talk with us.

7 Q Okay.

8 MR. LOVRIC: Those are all the questions I  
9 have at this time, Judge.

10 THE COURT: Mr. Fischer?

11 MR. FISCHER: Thank you, your Honor.

12 May it please the Court, counsel.

13 CROSS-EXAMINATION

14 BY MR. FISCHER:

15 Q Sir, my name is Kelly Fischer. I represent Mr.  
16 Sacco.

17 A Yes, sir.

18 Q Did you review any documents in preparation for  
19 your testimony?

20 A Yes, sir.

21 Q What documents did you review?

22 A The whole case jacket that I sent up to the state's  
23 attorney here and his statement, sir.

24 Q Did you bring that case jacket with you?

25 A Yes, sir.

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1 Q Did you review any documents other than what's  
2 contained in that case jacket?

3 A No, sir.

4 MR. FISCHER: Your Honor, may I review those  
5 documents, please?

6 THE COURT: Sure.

7 MR. FISCHER: Thank you.

8 MR. LOVRIC: Just for the record, Judge,  
9 they're the same as I've provided to counsel before, all the  
10 reports that I had.

11 Q Do you have, sir, another document that you have  
12 with you?

13 A Yes. This is the statement form that's also in the  
14 jacket, sir.

15 Q Okay. Thank you.

16 MR. FISCHER: May I just take one moment  
17 please, Judge?

18 THE COURT: Sure.

19 MR. FISCHER: Thank you, your Honor.

20 Q Sir, did you speak with Mr. Lovric in preparation  
21 for this case?

22 A Yes, sir.

23 Q When?

24 A Just a little while ago, sir.

25 Q Have you spoken with him before this?

David Pandiscia - Cross

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1 A Yes, sir.

2 Q When?

3 A That was approximately three months ago, I believe.

4 Q Have you spoken with Mr. Lyons, the FBI  
5 representative?

6 A Yes, sir.

7 Q When?

8 A Today, sir.

9 Q Have you spoken with Mr. Lyons before this?

10 A Yes.

11 Q When was that?

12 A This was a few months ago, sir.

13 Q When you spoke with Mr. Sacco, it was your  
14 intention to extract from him evidence that you could use to  
15 prosecute him for the incident involving Miss Monagan, am I  
16 correct?

17 A No, sir.

18 Q Did you know Miss Monagan's family before this  
19 incident occurred?

20 A No, sir.

21 Q Have you learned subsequently anything about Miss  
22 Monagan's family?

23 A No, sir.

24 Q Mr. Sacco, to make it clear, denied the claims that  
25 were made against him, am I correct?

David Pandiscia - Cross

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1 A He did make some statements, yes, sir.

2 Q I'll refer you to your statement. You have your  
3 statement in front of you, am I correct?

4 A Yes, sir.

5 Q At page 2 of 3. Is it correct that -- and I'm  
6 right about in the middle of the page. Am I correct in  
7 saying that Mr. Sacco told you, and I quote, "I had no  
8 inkling, propensity to outright violate someone anymore"?

9 A Yes, sir.

10 Q Do you see that?

11 A Yes, sir.

12 Q Did he in fact tell you that at that time he no  
13 longer had any such propensity?

14 A Anymore.

15 Q Is that what he said?

16 A That's right.

17 Q When was your statement taken from him?

18 A That day we interviewed him is -- I remember.

19 Q That day being what date?

20 A I believe that was December -- if I can refer to  
21 the date. I believe it was December 15.

22 Q Yes. At one point Mr. Sacco tried to make it clear  
23 to you, as I understand it, that he had changed, do you  
24 remember that?

25 A Yes, sir.

David Pandiscia - Cross

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1 Q At one point Mr. Sacco says that his recollections  
2 of the events are foggy, do you remember that?

3 A Yes, sir.

4 Q Now the events alleged are alleged to have occurred  
5 approximately three months before you interviewed Mr. Sacco,  
6 am I correct?

7 A Yes, sir.

8 Q Mr. Sacco came to you -- he voluntarily spoke with  
9 you about these incidents, didn't he?

10 A Yes, sir.

11 Q He never refused to speak with you about any of  
12 these incidents, did he?

13 A No, sir.

14 MR. FISCHER: All right. Those are all the  
15 questions I have. Thank you, Judge.

16 THE COURT: Okay. Miss Peebles?

17 MISS PEEBLES: No questions, Judge.

18 THE COURT: Mr. Lovric?

19 MR. LOVRIC: I have no further questions, your  
20 Honor.

21 THE COURT: Okay. Thank you, Detective  
22 Pandiscia. You may step down.

23 THE WITNESS: Can I have the report back?

24 THE COURT: Yes. Can we have the reports  
25 back.

1 (Witness excused)

2 THE COURT: All right, ladies and gentlemen.  
3 Because everybody thought that Agent Lyons would be on longer  
4 because there was no cross-examination yet, we're going to  
5 stop today. We don't have anything further for you. And  
6 tomorrow we're starting a half an hour early because Colleen  
7 let me off the hook. And we'll start at 9:30 in the morning.

8 And let me remind you not to discuss the case  
9 among yourselves, with anybody else or permit anyone to  
10 discuss it with you. If there's anything in the media,  
11 please just ignore it, and don't do any research on your own.

12 Have a nice evening. I hope it's warmer  
13 tomorrow.

14 (Court stands adjourned)

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C E R T I F I C A T I O N

I, VICKY A. THELEMAN, RPR, CRR, United States Court Reporter in and for the United States District Court, Northern District of New York, do hereby certify that I attended at the time and place set forth in the heading hereof; that I did make a stenographic record of the proceedings had in this matter and cause the same to be transcribed; that the foregoing is a true and correct copy of the same and the whole thereof.

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VICKY A. THELEMAN, RPR, CRR  
United States Court Reporter  
US District Court - NDNY

Dated: August 11, 2008.